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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 51, and 63

[WC Docket No. 17-84; FCC 17-154]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, a Report and Order takes a number of actions aimed at removing unnecessary regulatory barriers to the deployment of high-speed broadband networks. The Report and Order adopts pole attachment reforms, changes to the copper retirement and other network change notification processes, and changes to the section 214(a) discontinuance application process. The Commission adopted the Report and Order in conjunction with a Declaratory Ruling and Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 17-84, published elsewhere in this issue of the **Federal Register**.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], except for the amendments to 47 CFR 1.1424, 51.325, 51.329, 51.332, 51.333, 63.60, and 63.71, which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date.

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PRA@fcc.gov or contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 17-84, FCC 17-154, adopted November 16, 2017 and released November 29, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site at https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-154A1.docx.

Synopsis

I. INTRODUCTION

1. Access to high-speed broadband is an essential component of modern life, providing unfettered access to information and entertainment, an open channel of communication to far-away friends and relatives, and unprecedented economic opportunity. Technological innovation and private investment have revolutionized American communications networks in recent years, making possible new and better service offerings, and bringing the promise of the digital revolution to more Americans than ever before. As part of this transformation, consumers are increasingly moving away from traditional telephone services provided over copper wires and towards next-generation technologies using a variety of transmission means, including copper, fiber, and wireless spectrum-based services.

2. Despite this progress, too many communities remain on the wrong side of the digital divide, unable to take full part in the benefits of the modern information economy. To close that digital divide, we seek to use every tool available to us to accelerate the deployment of advanced communications networks. Accordingly, today we embrace the transition to next-generation networks and the innovative services they enable, and adopt a number of important reforms aimed at removing unnecessary regulatory barriers to the deployment of high-speed

broadband networks.

3. By removing unnecessary impediments to broadband deployment, the regulatory reforms we adopt today will enable carriers to more rapidly shift resources away from maintaining outdated legacy infrastructure and services and towards the construction of next-generation broadband networks bringing innovative new broadband services. And by reducing the costs to deploy high-speed broadband networks, we make it more economically feasible for carriers to extend the reach of their networks, increasing competition among broadband providers to communities across the country. We expect competition will include such benefits as lower prices to consumers. We anticipate taking additional action in the future in this proceeding to further facilitate broadband deployment.

II. BACKGROUND

4. On April 20, 2017, the Commission adopted a notice of proposed rulemaking, notice of inquiry, and request for comment (*Wireless Infrastructure NPRM*) proposing and seeking comment on a number of actions designed to accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment. *See* 82 FR 22453 (May 16, 2017). More specifically, the *Wireline Infrastructure NPRM* sought comment on: (1) reforming the Commission's pole attachment rules to make it easier, faster, and less costly to access the poles, ducts, conduits, and rights-of-way necessary for building out next-generation networks; (2) changing the process for retiring copper facilities and making other network changes to provide greater regulatory certainty and better enable carriers to transition more rapidly to modern networks; (3) streamlining the regulatory process by which carriers must obtain Commission authorization to discontinue legacy services so that scarce capital is free to be spent on delivering modern, innovative services; (4) using the Commission's preemption authority to prevent the enforcement of state and local laws that inhibit broadband deployment;

and (5) changing the Commission's legal interpretations to clarify when carriers must ask for permission to alter or discontinue a service and, thereby, to reduce the regulatory uncertainty that is costly and burdensome to providers.

5. At the same time, the Commission's Broadband Deployment Advisory Committee (BDAC), a federal advisory committee chartered earlier this year, is examining several of the issues raised in the *Wireline Infrastructure NPRM*. The BDAC is charged with providing the Commission with recommendations on how to accelerate the deployment of high-speed Internet access, or "broadband," by reducing and/or removing regulatory barriers to infrastructure investment. Since being chartered, the BDAC has held [three] public meetings and has five active working groups. We anticipate that the BDAC will provide important input on several matters relevant to this proceeding. We will examine the BDAC's recommendations closely in considering whether and how to move forward with those issues.

III. REPORT AND ORDER

A. Pole Attachment Reforms

6. In this Order, we address three pole attachment issues on which the Commission sought comment in the *Wireline Infrastructure NPRM*: (1) excluding capital costs recovered via make-ready fees from pole attachment rates; (2) establishing a shot clock for resolution of pole attachment access complaints; and (3) allowing incumbent local exchange carriers (LECs) access to poles owned by other LECs. In the *Wireline Infrastructure NPRM*, we requested comment on several other pole attachment issues, and we anticipate that we will address other pole attachment issues in a future order. In addition to the pole attachment issues addressed by this Order, the Commission sought comment in the *Wireline Infrastructure NPRM* on proposals that would adopt a streamlined timeframe for gaining access to utility poles, reduce charges paid by attachers to utilities for work done to make a pole ready for new attachments, and adopt a

formula for computing the maximum pole attachment rate that may be imposed on an incumbent LEC.

1. Excluding Capital Costs Recovered Via Make-Ready Fees from Pole Attachment Rates

7. We adopt the *Wireline Infrastructure NPRM*'s proposal to amend § 1.1409(c) of our rules to exclude capital expenses already recovered via non-recurring make-ready fees from recurring pole attachment rates. "Make-ready" generally refers to the modification of poles or lines or the installation of certain equipment (e.g., guys and anchors) to accommodate additional facilities on poles. In adopting this proposal, we reaffirm and emphasize longstanding Commission precedent. Almost forty years ago, the Commission found that "where a utility has been directly reimbursed by [an] . . . operator for non-recurring costs, including plant, such costs must be subtracted from the utility's corresponding pole line capital account to insure that . . . operators are not charged twice for the same costs." Since that time, the Commission has made clear that "[m]ake-ready costs are non-recurring costs for which the utility is directly compensated and as such are excluded from expenses used in the rate calculation." Nonetheless, the record demonstrates that not all attachers benefit from lower rates in these circumstances, in part because our rules do not explicitly require utilities to exclude already-reimbursed capital costs from their pole attachment rates.

8. We agree with commenters that argue that codifying the exclusion of capital expenses already recovered via make-ready fees from recurring pole attachment rates will help eliminate confusion. Codifying this exclusion is consistent with the BDAC recommendation that we clarify that utilities are not allowed to "use an increase in rates to recover capital costs already addressed in make-ready fees." While some commenters argue that it is unnecessary to codify this exclusion because current Commission policies already prevent make-ready payments

from being included in the formulas used to calculate recurring pole attachment rates, we find that codification of the rule will enhance the deployment of broadband services and should improve compliance with long-standing precedent by providing additional clarity in the text of our rules.

2. Establishing a “Shot Clock” for Resolution of Pole Access Complaints

9. *180-Day Shot Clock.* We establish a 180-day “shot clock” for Enforcement Bureau resolution of pole access complaints filed under § 1.1409 of our rules. A “pole access complaint” is a complaint filed by a cable television system or a provider of telecommunications service that alleges a complete denial of access to a utility pole. This term does not encompass a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of pole access. When the Commission last considered this issue as part of the *2011 Pole Attachment Order*, the record did not support the creation of new pole attachment complaint rules. By contrast, the record before us today includes broad support for establishing a shot clock for resolving pole access complaints, and we agree with commenters that establishment of such a shot clock will expedite broadband deployment by resolving pole attachment access disputes in a quicker fashion. As the POWER Coalition explains, pole access complaints “are more urgent than complaints alleging unreasonable rates, terms and conditions,” and because the only meaningful remedy for lack of pole access “is the grant of immediate access to the requested poles,” it is crucial for the Enforcement Bureau to complete its review of pole access complaints in a timely manner. Similar to the shot clock for Commission review of domestic transfer of control applications, we expect that the 180-day shot clock for pole access complaints will be met except in extraordinary circumstances.

10. We agree with commenters that argue that 180 days provides a reasonable timeframe for the Enforcement Bureau to resolve pole access complaints. While some

commenters request a shorter shot clock, and the Utilities Technology Council opposes a shot clock on the grounds that it would inhibit the Enforcement Bureau's ability to comprehensively evaluate facts on a case-by-case basis, we find that 180 days will provide the Enforcement Bureau sufficient time to carefully evaluate the particular facts of each pole access complaint. We note that in a separate proceeding, the Commission is considering whether to adopt a shot clock for all pole attachment complaints. We find the record for this Order is sufficient to support the adoption now of a shot clock for a narrowly-targeted group of pole attachment complaints (i.e., those alleging a denial of access to poles) that will aid broadband deployment and investment. We find it instructive that, as Verizon points out, a 180-day shot clock for pole access complaints aligns "with the time period that Congress gave reverse-preemption states to decide pole attachment complaints" under section 224(c)(3)(B) of the Act. Furthermore, the Enforcement Bureau can pause the shot clock in certain situations and/or exceed 180 days in extraordinary circumstances, which should ensure that the Enforcement Bureau can comprehensively evaluate any pole attachment access dispute.

11. *Starting the Shot Clock at the Time a Complaint Is Filed.* We direct the Enforcement Bureau to start the 180-day shot clock when a pole access complaint is filed. This approach is consistent with that set forth in the Act for states that act on pole attachment complaints, is broadly supported in the record, and was recommended by the BDAC.

12. *Pausing the Shot Clock.* The Enforcement Bureau may pause the shot clock when actions outside the Enforcement Bureau's control delay the Bureau's review of a pole access complaint. This approach also has broad support in the record and was recommended by the BDAC. We find it instructive that in the transactions context, the reviewing Bureau can pause the shot clock while waiting for parties to provide additional requested information. The Enforcement Bureau may, for example, pause the shot clock when the parties need additional

time to provide key information requested by the Bureau, or when the parties decide to pursue informal dispute resolution or request a delay to pursue settlement discussions after a pole access complaint is filed. The Enforcement Bureau should resume the shot clock immediately when the cause for pausing the shot clock has been resolved. We direct the Enforcement Bureau to provide the parties written notice of any pause in the shot clock, as well as when the shot clock is resumed.

13. *Establishment of Pre-Complaint Procedures.* Consistent with our goal of adopting measures to expedite broadband deployment by resolving pole attachment access disputes in a more timely manner, we decline to delay the beginning of the complaint process by requiring the parties to resolve procedural issues and deadlines in a meeting with Enforcement Bureau staff prior to the filing of a pole access complaint. We also decline the suggestion made by Ameren et al. that we require pre-complaint mediation or the discussion of mediation in a pre-complaint meeting. Successful mediation can save the parties and the Enforcement Bureau valuable time and resources and we encourage the voluntary use of mediation through the Enforcement Bureau, but we decline to adopt such a requirement and believe the decision as to whether to mediate is better left to the parties. We also recognize that there are times when the Enforcement Bureau requests that parties participate in post-complaint meetings in order to resolve procedural issues and deadlines associated with its review of a complaint. We find that, in general, the complaint process has proceeded in a more timely and smooth manner as a result of post-complaint meetings, and encourage the Enforcement Bureau to continue that practice as appropriate.

14. *Use of Shot Clock for Other Pole Attachment Complaints.* We also decline at this time to adopt a 180-day shot clock for pole attachment complaints other than those relating to pole access issues. We recognize the BDAC adopted a recommendation in favor of a 180-day

shot clock for all pole attachment complaints, including pole access complaints; however, in the *Complaint Procedures NPRM*, we are currently seeking comment on whether to apply shot clocks (either uniformly or with differing deadlines) to a number of types of formal complaints, including non-access pole attachment complaints filed under section 224 of the Act. In addition to complaints filed under section 224 of the Act, the Commission is seeking comment on whether to adopt shot clocks for complaints filed under sections 208, 255, 716, and 718 of the Act. Although some commenters in this record support a 180-day shot clock for all pole attachment complaints, we defer to the record being developed in the *Complaint Procedures NPRM* for resolution of this issue. We note the BDAC also recommended adoption of a 180-day shot clock for all pole attachment complaints.

3. Recognizing a Reciprocal System of Access to Poles Pursuant to Section 251

15. We also take this opportunity to reconsider the Commission's previous interpretation of the interplay between sections 224 and 251(b)(4) of the Act. Based on the record before us, we conclude the better interpretation is to give effect to both sections and read the two sections in harmony as creating a reciprocal system of infrastructure access rules in which incumbent LECs, pursuant to section 251(b)(4) of the Act, are guaranteed access to poles owned or controlled by competitive LECs and vice versa, subject to the rates, terms, and conditions for pole attachments described in section 224. We note that incumbent LECs will be entitled to file pole access complaints under the new rule adopted in this Order and such complaints will be subject to the 180-day shot clock. As CenturyLink explains, the disparate treatment of incumbent LECs and competitive LECs prevents incumbent LECs from gaining access to competitive LEC-controlled infrastructure and in doing so dampens the incentives for all LECs to build and deploy the infrastructure necessary for advanced communications services.

16. Section 251 of the Act provides that “[e]ach local exchange carrier” has the duty “to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 [of the Act].” Section 224(f) of the Act requires utilities to provide cable television systems and telecommunications carriers with nondiscriminatory access to any pole that they own or control. While section 224(a) of the Act defines a “utility” to include both incumbent LECs and competitive LECs, the definition of “telecommunications carrier” used in section 224 specifically does not include incumbent LECs, thus potentially denying incumbent LECs the benefits of section 224’s specific pole attachment access and rate protections.

17. When the Commission initially examined this disparate treatment of incumbent LECs as part of the *First Local Competition Order*, it held that incumbent LECs cannot use section 251(b)(4) as a means of gaining access to competitive LEC poles because section 224(a) specifically excludes incumbent LECs from the definition of those telecommunications carriers entitled to nondiscriminatory access to utility poles. As a result, the Commission concluded it would be inappropriate to grant incumbent LECs access rights that the Commission believed were “expressly withheld by section 224.” Consequently, while incumbent LECs were required as utilities under section 224 to provide nondiscriminatory access to their poles to all cable television providers and telecommunications carriers (including competitive LECs), incumbent LECs could not obtain reciprocal nondiscriminatory access to the poles controlled by competitive LECs. However, as the Ninth Circuit Court of Appeals explained in *US West Communications, Inc. v. Hamilton*, sections 224 and 251 can “be read in harmony” to support a right of access for incumbent LECs on other LEC poles. Despite its skepticism of the Commission’s analysis in the *First Local Competition Order*, the Ninth Circuit held it was obligated to adhere to that analysis because the parties had not directly challenged the *First*

Local Competition Order via the Hobbs Act.

18. Because the Commission's prior interpretation of sections 224 and 251(b)(4) fails to give full effect to the language of section 251(b)(4) and in doing so also disserves the public interest and harms consumers by distorting both incumbent LEC and competitive LEC incentives to construct infrastructure that can be used to provide broadband services, we think the better approach is to read the sections in harmony. We agree with the Ninth Circuit in *US West*, as well as with commenters such as AT&T and WTA, that section 251(b)(4) provides incumbent LECs with an independent right of access to the poles owned by other LECs and that section 224 then determines the appropriate rates, terms, and conditions of such access. We disagree with NCTA's claim that imposing new infrastructure access obligations on competitive LECs "would be of limited relevance because the only infrastructure owned by competitive LECs that conceivably would be useful to an incumbent LEC is conduit." We find that broadband deployment is likely to be spurred by applying the reciprocal access obligations to all broadband infrastructure covered by section 251(b)(4) of the Act (e.g., poles, ducts, conduits, rights-of-way). As the Ninth Circuit stated in *US West*, "Section 224 deals with all utilities, whereas section 251(b)(4) concerns only telecommunications carriers. Section 224 allows CLECs, but not ILECs, access to the physical networks and rights-of-way of all other utilities, including those belonging to electric companies, gas companies, water companies, and the like. Because ILECs had their own physical networks and established rights-of-way when the Act was passed, Congress may have seen fit to grant access to non-carrier utilities' networks and rights-of-way only to CLECs. But in order to maintain a level playing field within the telecommunications industry itself, Congress reasonably could have granted reciprocal access among telecommunications carriers, ILECs and CLECs alike, by means of section 251(b)(4)." Our reading gives full effect to the language of both sections 224 and 251(b)(4) without creating a

conflict between them and also advances our goal in this proceeding of advancing broadband infrastructure investment and deployment.

19. We disagree with ExteNet and the Competitive Fiber Providers' arguments that reversing the Commission's prior interpretation of sections 224 and 251(b)(4) "could discourage the broadband deployment these proceedings are designed to promote, impose discriminatory costs and obligations on only one type of owner of competitive poles, and reverse decades of light touch regulation for competitive providers." According to ExteNet and the Competitive Fiber Providers, the burden of accommodating incumbent LEC pole access will fall disproportionately on competitive LECs instead of the cable companies that are not "local exchange carriers" under section 251(b)(4). However, even if ExteNet and the Competitive Fiber Providers are correct that accommodating incumbent LEC pole access creates additional burdens for non-cable competitive LECs, we are bound by Congress' determination in section 251(b)(4) to apply such obligations to competitive LECs and not to cable operators.

20. We also fail to see how the imposition of incumbent LEC pole access obligations on poles owned by other LECs will "stifle competitive deployment of fiber infrastructure" as argued by the Competitive Fiber Providers. Competitive LECs are already required to make their pole infrastructure available to other competitive LECs as well as cable television system operators, so any pole deployment decisions would be made (or have been made) with the knowledge that other pole attachers must be accommodated. Any incremental costs associated with expanding the accommodation to include incumbent LECs should not deter competitive LEC pole ownership because such costs will be borne by the incumbent LEC attachers in the form of make-ready fees. Consequently, we find that rather than stifling broadband deployment, the opposite is more likely—allowing incumbent LEC access to poles owned by other LECs should expand broadband deployment by increasing access to broadband infrastructure.

21. We also disagree with ExteNet and the Competitive Fiber Providers’ argument that changing our interpretation of sections 251(b)(4) and 224 will give incumbent LECs greater leverage over their competitors because they own more poles and therefore have greater bargaining power. Our decision does not change the pole access rights of competitive LECs, as they will continue to have mandatory non-discriminatory access to incumbent LEC poles. Rather than “putting the Commission’s thumb on the scale in favor of the party [incumbent LECs] that owns a much greater percentage of poles,” our decision instead creates regulatory parity among all categories of attachers by ensuring reciprocal pole access rights.

B. Streamlining the Network Change Notification Process

22. Today we eliminate unnecessary and costly regulations governing network change disclosures, including copper retirements, while retaining certain requirements whose benefits outweigh the associated costs to incumbent LECs. The revised rules we adopt today, consistent with the Act, the Commission’s longstanding policy goals, and supported by the record now before us, ensure that competing providers receive “adequate, but not excessive, time to respond to changes to an incumbent LEC’s network.” We conclude that the Commission failed to achieve this balanced objective in 2015 when it imposed far-reaching and burdensome notice obligations on incumbent LECs that frustrate their efforts to modernize their networks. By reforming our rules and returning to the Commission’s longstanding balance, we eliminate unnecessary delays in our regulatory process that help carriers more rapidly transition to more modern networks benefitting more Americans at lower costs.

23. Section 251(c)(5) of the Act requires an incumbent LEC “to provide reasonable public notice of changes” to its facilities or network that might affect the interoperability of those facilities or networks. Congress expressly made this a notice-based process, in contrast to statutory provisions requiring an approval-based process. Incumbent LECs are also subject to

certain state laws requiring them to maintain adequate equipment and facilities.

24. It is important to distinguish between copper retirement and discontinuance of service. While it is possible that a network change, like a copper retirement, could ultimately lead to a discontinuance of service, that eventuality is governed by the Commission's section 214(a) discontinuance process. Otherwise, section 214(a)'s exception from its coverage for changes to a carrier's network would be rendered moot. The Commission's decision in the *Triennial Review Order* to include the copper retirement provisions in the network change notice rules rather than in the rules governing the discontinuance process underscores this distinction. Section 251(c)(5) reflects the decision by Congress that a notice-based network change process best serves the public by striking a balance between allowing incumbent LECs to make changes to their networks without undue regulatory burdens and giving competitive LECs time to account for those changes. We are empowered to ensure that our rules governing copper retirements and other network changes do not impede or delay these transformational and beneficial network changes through unreasonable and burdensome notice-related obligations. The actions we take today will accomplish this objective.

25. We are also unpersuaded by incumbent LEC assertions that the network change disclosure rules are outdated because they apply only to incumbent LECs despite the fact that incumbent LECs currently provide voice service to a relatively small percentage of households. The implementing statute specifically applies these notice requirements solely to incumbent LECs, and consistent with the Act we find they continue to be necessary to ensure the interoperability of our nation's communications networks.

1. Revising the General Network Change Disclosure Process

**a. Eliminating Prohibition on Incumbent LEC Disclosure of
Information About Planned Network Changes Prior to Public**

Notice

26. Section 51.325(c) of our rules currently prohibits incumbent LECs from disclosing information about planned network changes to “separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors)” until public notice has been given under the applicable rules. Based on the record, we find that this prohibition on incumbent LECs’ ability to freely communicate with other entities regarding their plans for upgrading their networks prior to filing the requisite public notice impedes the ability of these LECs to engage and coordinate with the parties that will ultimately be affected by those changes. Accordingly, we eliminate this provision.

27. A primary goal of the 1996 Act was to foster competition. When the Commission adopted § 51.325(c) in 1996, the Commission was concerned that incumbent LECs might try to give their long distance or equipment manufacturing affiliates a competitive advantage through early disclosure. Circumstances have substantially changed in the intervening two decades and incumbent LECs no longer have the near-monopoly they once did. To the contrary, intermodal competition is more prevalent than ever. Moreover, given this intermodal competition, long-distance service is no longer a separate market. Further, as noted by AT&T, incumbent LECs “do not have a significant presence in the market for manufacturing CPE.” As a result, commenters’ concern that eliminating this prohibition may result in anti-competitive conduct by incumbent LECs is no longer as persuasive as it once was. We are similarly unpersuaded by ADT’s concern that incumbent LECs may gain a competitive advantage with respect to services such as alarm monitoring. As with the manufacturing of CPE, there is significant intermodal competition in the provision of alarm monitoring services, including provision of such services over media other than copper.

28. The practical effect of § 51.325(c) today is to slow deployment of next-generation

networks and withhold useful information by preventing incumbent LECs from discussing their network change plans with any party. For example, this prohibition has prevented incumbent LECs from sharing planned copper retirement information with wholesale and retail customers in response to customers' specific requests for information, and impeded incumbent LECs' ability to engage with landlords and tenants early in a copper retirement process to ensure timely access to the premises to deploy fiber prior to retiring existing copper facilities. We agree with commenters that argue that removing the prohibition on the free flow of information between the incumbent LEC and all potentially impacted entities will permit incumbent LECs to work with affected competitive LECs, government users, enterprise customers, and others at the appropriate time in the normal course of business dealings with such entities, and over a longer period of time to plan for eventual network changes. Giving incumbent LECs the ability to engage with these entities prior to providing public notice under our rules will be especially useful to mitigating concerns raised by certain commenters regarding the impact our revised copper retirement notice process might have on particular users.

29. We decline certain commenters' suggestions that if we eliminate § 51.325(c), we require incumbent LECs to provide notice of network changes to all interconnecting entities before providing public notice. Such a requirement would be unwieldy and unduly burdensome and it would effectively require public notice earlier than would otherwise be required by the rules. Moreover, such pre-public notice disclosures of potential changes to the incumbent LEC's network may well occur at a phase when the incumbent LEC's plans are not yet solidified and might still change. Requiring formal disclosure to interconnecting parties that will eventually be entitled to disclosure under the Commission's rules could result in unnecessary confusion or unnecessary work by and expense to interconnecting carriers should the incumbent LEC's plans change. This is the very reason the network change disclosure rules do not require

public notice until the incumbent LEC's plans reach the make/buy point, a requirement that remains in place. To be clear, however, our rules do not negate the terms of privately negotiated contracts that may include provisions regarding notice of potential network changes. Moreover, by eliminating § 51.325(c), we enable parties to negotiate network change notification provisions that allow for notice well in advance of public notice and that best serve their individual needs in the service contracts they enter into with incumbent LECs.

**b. Retaining Objection Procedures for Short-Term Network
Change Notices**

30. We conclude that we should retain the objection procedures currently applicable to short-term notices of network changes. Short-term network change notices are an exception to the general rule adopted in the *Second Local Competition Order* requiring notice of planned network changes at least six months before implementation of the planned changes. An objector can seek to have the waiting period for a short-term network change extended to no more than six months from the date the incumbent LEC first gave notice. Although the objection procedures have rarely been invoked, the possibility of an objection provides incentive for incumbent LECs to work cooperatively with competitive LECs and keep open lines of communication with them, thus avoiding potential delays. We are unpersuaded by USTelecom's concern that competing service providers might use the objection process to unwarrantedly delay a network change. The Commission made clear in the *Second Local Competition Order* that such efforts would not be tolerated and indeed could expose the objector to sanctions. We thus conclude that retaining the objection procedures applicable to short-term notices of planned network changes maintains an appropriate balance between the needs of incumbent and competitive LECs and is consistent with Commission precedent.

2. Expediting Copper Retirement

31. Today we eliminate or substantially scale back the copper retirement rules adopted by the Commission in 2015, because the record demonstrates that those rules have added cost and delay into the process with no apparent corresponding benefits. The record shows that these rules have delayed certain incumbent LECs' plans to deploy fiber and, in some instances, to even consider foregoing fiber deployment altogether. We therefore make these rule changes to ensure these delays and foregone next-generation network opportunities no longer occur on our account. In doing so, however, we continue to recognize the unique circumstances posed by the need to accommodate copper retirements in contrast to other types of network changes.

32. When the Commission first adopted its copper retirement rules fourteen years ago, fiber deployment was in its infancy and copper was the primary last-mile transmission medium for telecommunications services. In seeking to foster competition in adopting rules implementing the 1996 Act, the Commission signaled its goal was not to impose the associated regulatory burdens on incumbent LECs indefinitely. Rather, it intended to eventually ease those burdens once they became unnecessary. Permitting competitive LECs to continue to rely on unfettered access to incumbent LECs' copper facilities when incumbent LECs are rapidly trying to modernize such networks to both compete with newer fiber-based competitors and to bring innovative and superior services to the public frustrates rather than facilitates fiber deployment. Indeed, as early as 2003, the Commission recognized "that the substantial revenue opportunities posted by FTTH deployment help ameliorate many of the entry barriers presented by the costs and scale economies," specifically noting then that "competitive LECs have demonstrated that they can self-deploy FTTH loops and are doing so at this time." Thus, competitive LECs could not have been operating under the impression that they would be able to rely on incumbent LEC networks forever in the "race to build next generation networks" envisioned by the Commission.

33. In the intervening years, competitors have had the opportunity to explore and develop ways to compete in a world without copper. Likewise, consumers and enterprise customers have had the opportunity to learn about the transition from legacy networks comprised of copper to next-generation fiber networks. The “gradual transition” advocated by one commenter has been ongoing for many years now. Although this will continue to be a gradual, organic, carrier-driven process, we believe it is important to spur the process along rather than slow it down with unnecessary regulatory burdens. We will not impede the progress toward deployment of next-generation facilities for the many because of the reticence of an ever-shrinking few.

a. Retaining Distinctions Between Copper Retirement and Other Network Changes.

34. At the outset, we retain the distinction between copper retirements and other types of network changes for purposes of section 251(c)(5) notice. On balance, the record supports the continued need for such a distinction. In adopting the network change disclosure rules following the 1996 Act, the Commission recognized that not all types of network changes present the same level of difficulty for interconnecting carriers. It thus adopted different requirements for long-term network changes, i.e., those that cannot be implemented in less than six months from the make/buy point, and short-term network changes, i.e., those that can be implemented in less than six months. The Commission subsequently recognized that copper retirement network changes have a potentially greater impact on interoperability than other network changes because they “affect[] the ability of competitive LECs to provide service.” Although competitors are increasingly relying on their own facilities to compete, for at least some competitive LECs that remains the case today.

35. We agree that competitive LECs are more familiar with accommodating copper

retirements now than they were 14 years ago when the Commission first adopted its copper retirement rules; however, we are not persuaded that experience obviates the fact that copper retirements are more complicated and impactful than many other types of network changes. For example, where the copper retirement impacts competitive LECs providing Ethernet over Copper or purchasing TDM-based DS1s and DS3s, the affected competitive LECs often must migrate to other forms of last-mile access, change the service being offered and provide time for the retail customer to accommodate the change, or provide time for the retail customer to secure an alternative service arrangement. We thus disagree with incumbent LEC commenter assertions that copper retirements require no special treatment as compared to other types of network changes. As the Commission previously explained, competitors cannot be expected “to react immediately to network changes that the incumbent LEC may have spent months or more planning and implementing.”

36. The reforms we adopt today bring the copper retirement process closer in line with the more generally applicable network change disclosure process. However, because short-term network changes can be implemented within as little as ten days of the Commission’s release of a public notice, eliminating the distinction between copper retirements and other types of network changes could have adverse effects on interconnected carriers that continue to rely on available copper facilities to serve their end-users. We therefore decline to eliminate the distinction altogether. The reforms discussed below reduce the burdens on incumbent LECs, achieving a balance between those minimal burdens and the benefits of adequate notice to interconnected carriers who rely on the incumbent LECs’ networks.

b. Narrowing the Definition of Copper Retirement.

37. *De Facto Retirement.* We revise the definition of copper retirement to eliminate the de facto retirement concept that was included in the amendments made to the rules in 2015.

We agree with commenters that the de facto retirement provision has unreasonably increased incumbent LECs' burden with no corresponding benefit, and serves no purpose in the context of section 251(c)(5)'s notice requirement. The current rule requires that the incumbent LEC provide notice of copper retirement when it fails to "maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling." Thus, by its very terms, a de facto retirement could have conceptually already occurred when notice would be required under the rule we eliminate. Unlike notice of a forthcoming change, there is no practical way to implement the requirement that an incumbent LEC provide notice of a de facto retirement, and therefore consumers receive no notice benefit from this concept being part of the definition of copper retirement. Further, loss of service is properly addressed in the context of the discontinuance approval process established by section 214(a) of the Act.

38. We do not agree with those commenters that argue that customers located in areas where there are no options other than copper will suffer if the Commission eliminates de facto retirement from the notice requirement. If an incumbent LEC has no plans to deploy fiber or other next-generation technology, it must maintain its copper networks, or it will have access to fewer customers. More fundamentally, we do not agree with commenters that argue that copper retirement notices are an important way for customers to learn about network deterioration or that eliminating de facto retirement from the notice requirement "will allow incumbent carriers to neglect their copper infrastructure." If copper deterioration is causing service quality issues, notice that copper deterioration is the reason for the service quality problems provides no benefit to the customers. Moreover, incumbent LECs are free to resolve those issues by migrating the customer to fiber, as long as the nature of the service being provided to the customer remains the same.

39. We are similarly unpersuaded by arguments that incumbent LECs allow their copper networks to deteriorate in order to “push” their customers onto fiber. The Act gives carriers, not the Commission, the authority to design their networks and choose their own architecture. The Act directs that incumbent LECs need only go through the Commission’s copper retirement notice process, absent a discontinuance of service that triggers the requirement to seek Commission approval under section 214(a). To the extent commenters are concerned that eliminating the de facto retirement provision could result in an inability to seek Commission redress should an incumbent LEC willfully or otherwise allow its network to degrade, a mandatory notice requirement with no accompanying remedy should give them little solace. Either way, eliminating this unnecessary notice requirement does not foreclose other avenues for relief. Incumbent LECs providing telecommunications services remain subject to section 214(a)’s discontinuance process requirements, and in some states, they remain subject to state-level service quality requirements.

40. *Feeder.* By contrast, we retain the feeder portion of the incumbent LECs’ loops in the copper retirement definition because of the significant impact retirement of copper feeder can have on competitive LECs’ abilities to continue to provide service to their end-user customers. We agree with commenters that recommend that an incumbent LEC seeking to retire the feeder portion of its copper-based network must comply with the copper retirement notice rules rather than the more generally applicable network change disclosure rules. The record demonstrates that the benefits to both interconnected competitive LECs and their respective end-user customers of providing notice under the copper retirement rules when an incumbent LEC seeks to retire the copper feeder portion of its loops significantly outweighs the additional burdens on the incumbent LEC of complying with the copper retirement notice process in such situations. It is not “mere theory” that an interconnecting carrier might need notice of an

incumbent LEC's plan to retire copper feeder. The record indicates that there are interconnected carriers that rely on copper feeder to serve their end-users. If we eliminate feeder from the definition of copper retirement, interconnecting carriers entitled to "reasonable notice" under section 251(c)(5) might not receive sufficient notice to continue to provide services to their end-user customers or to enable those end-users to transition to another provider. Retaining feeder in the definition ensures that these interconnected carriers are provided notice of copper retirement in the same timeframes as interconnected carriers that rely on copper loops or sub-loops to serve their end-users. Moreover, we find our additional streamlining of the copper retirement notice process should address the primary concerns of commenters advocating for elimination of feeder from our copper retirement rules.

c. Streamlining the Copper Retirement Notice Process

41. Today we eliminate the changes made to the copper retirement rules adopted in 2015 and reinstate, with certain modifications, the rules applicable to copper retirements that existed prior to that time. We find broad support in the record for these changes that will ease the regulatory burdens on incumbent LECs in transitioning to next-generation networks, affording them greater flexibility and eliminating the delays and additional costs imposed by § 51.332's rigid requirements. We also find that these changes, along with incumbent LECs' greater freedom to engage potentially affected parties earlier in the planning process, will simultaneously accommodate the concerns of most commenters by affording sufficient time to accommodate planned changes and addressing parties' needs for adequate information and consumer protection.

42. At the outset, we disagree with commenters that assert that the record contains no evidence that alleviating the significant burdens on incumbent LECs imposed by the copper retirement rules adopted in 2015 will spur broadband deployment. The record shows that the

burdens caused by delays in copper retirements resulting from expansive notice obligations can be quite significant, including costs associated with the ongoing need to maintain various parallel computer systems and retain dedicated engineering staff. Indeed, record evidence suggests savings of \$45-\$50 per home passed per year achieved by retiring copper facilities. According to Corning, this savings estimate breaks down as follows: First, by “[r]educing the copper footprint [the incumbent LEC] can save upwards of 80% of central office space,” which “equates to a savings of roughly \$35 per home passed per year of real estate expense.” Second, “electrifying the copper network and equipment takes a significant amount of electricity to operate, estimated at \$1.49 per home passed per year of electricity expense.” Finally, “there is a large amount of incremental maintenance for the copper network,” and “[i]n 2013, Verizon estimated that in areas where both FiOS and copper existed, they were spending more than \$200 million annually on the copper network, or roughly \$10 per home passed with both fiber and copper per year of maintenance expense.” Couple that with Verizon’s statement that it has filed to retire copper facilities at 3.8 million locations, and it appears that Verizon’s copper retirements alone may result in between \$171 million and \$190 million in cost savings that could be put to use in deploying next-generation networks. And expediting the copper retirement process could contribute to 26.7 million incremental premises being passed by fiber over a five-year period. Requiring that incumbent LECs forego these potential savings results in opportunity costs and creates a disincentive to broadband investment.

43. We disagree with arguments that the changes we adopt today to our copper retirement notice process “may make it easier for providers to shut down networks and services.” We start by noting that incumbent LECs, like their competitors, already have marketplace incentives to maintain service to customers. What is more, such arguments confuse the copper retirement notice process—which applies only when a carrier makes changes to its network—

with the discontinuance process. If an incumbent LEC's copper retirement will result in a discontinuance of service, the carrier must still go through the process of obtaining Commission authorization. In that process, customers can still object to the proposed discontinuance and raise concerns regarding the adequacy of available alternative services, one of the five factors the Commission traditionally considers when evaluating discontinuance applications.

(i) Reducing scope of direct notice requirements.

44. To facilitate the rapid transition to next-generation services, we eliminate unnecessary copper retirement notice requirements.

45. *Eliminating notice to retail customers.* Today we revise the copper retirement rules to eliminate the requirement of direct notice to retail customers adopted in 2015. Based on the record, we conclude that the potential benefits of direct notice of copper retirements touted in the *2015 Technology Transitions Order* have not come to pass. Instead, there is evidence that notice of planned copper retirements, pursuant to § 51.332, has caused confusion and delay. Moreover, incumbent LECs have strong incentives to work closely with their retail customers in order to retain their business given the competition they face from competitive LECs, cable providers, and wireless providers. They do not require mandatory and prescriptive Commission-ordered notice to educate and inform their customers of network transitions from copper to fiber. Rather, these communications must necessarily occur for the incumbent LEC to continue providing the services to which its customers subscribe.

46. We are unpersuaded by commenter assertions that retail customers need us to mandate direct notice of planned copper retirements because of the impact these changes will have on the functionality of devices and services operating on the network. We recognize the reliance consumers place on the functioning of equipment that connect to incumbent LECs' legacy networks, such as fax machines, alarm systems, and health monitoring devices. And

many enterprise customers, particularly utilities, continue to rely on TDM-based services today despite the existence and widespread availability of more innovative IP-based services. In both instances, however, commenters calling for continued direct notice of copper retirements wrongly focus on the underlying transmission medium, i.e., the copper network facilities, rather than on the technology of the service being provided by the incumbent LEC, i.e., whether it is TDM-based or IP-based. Should the copper retirement be accompanied by a transition to an IP or other technology-based service, only then would the carrier be potentially subject to our Section 214(a) discontinuance process rules. The record confirms that the equipment and devices about which commenters express concern generally continue to function over fiber facilities as long as that service remains TDM-based. This is the case in copper retirements absent other service changes, despite the confusion of many commenters who conflate copper retirement and service discontinuance. Indeed, incumbent LECs devote resources to ensure that the devices their residential customers use over their networks continue to work, including TTY devices. And while the lines serving a customer's home will no longer carry power, that is remedied by use of a back-up power unit, a matter the Commission has previously addressed. Indeed, certain carriers, such as Verizon, provide back-up power units to their customers free of charge in connection with copper retirements without a Commission mandate to do so.

47. We recognize that copper-to-fiber transitions can be more complicated and time-consuming for certain non-residential retail customers, including utilities and federal agency customers. However, the record shows that in practice, § 51.332's requirement that incumbent LECs provide notice on a reticulated schedule to non-residential retail customers imposes more significant burdens and delay on incumbent LECs than the Commission anticipated when it adopted the *2015 Technology Transitions Order*. Indeed, in adopting that order, the Commission failed to account for the important fact that large enterprise customers with complex

telecommunications requirements generally enter into long-term contracts with their telecommunications providers, thus affording those customers the ability to negotiate service-related protections from changes that might abruptly and negatively impact their communications capabilities. This is an especially significant oversight given the fierce competition among incumbent LECs, large cable companies, competitive LECs, and numerous smaller facilities-based service providers for these non-residential retail customers. Incumbent LECs have strong incentives to work with these enterprise customers to avoid service disruptions, and we reiterate that our rules do not override the terms of these privately negotiated agreements, including any notice provisions related to network changes generally and copper retirements specifically, contained within those agreements. Accordingly, we disagree with commenters that assert that enterprise customers, in particular utilities as well as federal agencies such as the FAA, will be harmed and public safety will be put at risk if they do not receive direct notice of copper retirements. Suggestions that incumbent LECs would risk harming public safety or fail to work cooperatively and diligently to accommodate critical needs of their public-safety related customers absent a mandatory Commission notice obligation defies both reason and experience.

48. We expect and encourage incumbent LECs to continue to collaborate with their customers, especially utilities and public safety and other government customers, to ensure that they are given sufficient time to accommodate the transition to new network facilities such that key functionalities are not lost during this period of change, and we specifically rely on incumbent LEC commenters that stress the incentives they have to work with their retail customers. And because we are eliminating the rule prohibiting incumbent LECs from discussing planned network changes in advance of public notice, incumbent LECs can now respond to requests for information from these customers about planned network changes at any

time. By eliminating this prohibition, we give incumbent LECs the freedom to engage their wholesale and retail customers far earlier in the planning process, thus allowing those customers, in turn, to begin planning and budgeting for the coming changes.

49. Similarly, with respect to residential retail customers, we do not believe that Commission-mandated direct notice of planned copper retirements serves any practical purpose, nor has it helped reduce confusion, despite the relatively seamless nature of a copper-to-fiber transition. We anticipate that residential consumers will continue to be well-informed about copper retirements impacting their service absent Commission-imposed notice obligations. Indeed, incumbent LECs necessarily must reach out to these customers and communicate with them about their specific planned copper retirement to work with them, individually, to access their homes in order to accomplish their migration to the new fiber-based network. This migration simply cannot occur absent these communications. As a result, commenters are mistaken to assert that consumers need Commission-mandated direct notice of planned copper retirements to be fully informed.

50. The record shows that the three largest incumbent LECs that together serve approximately 74% of households purchasing legacy voice service from incumbent LECs acknowledge and embrace their role in educating consumers of the effect of impending changes in the network over which their service is provided, not just of the benefits of advanced, IP-based services. And the record suggests that States that wish to do so are well positioned to engage in consumer education and outreach efforts. Indeed, incumbent LECs are already collaborating with state commissions in certain jurisdictions to educate consumers and minimize confusion about copper retirements. Such efforts are more likely to reduce consumer confusion than governmentally-mandated notices and timeframes. While we acknowledge here USTelecom's suggestion of a "concerted, federal government-wide effort to ensure that Executive Branch

policies do not prolong the federal government’s reliance on legacy services,” such action is outside the scope of the Commission’s authority.

51. Finally, section 251(c)(5) of the Act, embodied in the market-opening local competition provisions, sets forth the duties of telecommunications carriers vis-à-vis other telecommunications carriers. It specifically speaks to the need to provide information to allow “transmission and routing” and ongoing “interoperability” with the incumbent LECs’ networks, matters in which retail customers are not engaged. The Commission implicitly and correctly recognized this limitation when adopting the first network change disclosure rules in the *Second Local Competition Order*, concluding that notice of sufficient information to deter anticompetitive behavior was necessary and that “incumbent LECs should give competing service providers complete information about network design, technical standards and planned changes to the network.”

52. *Limiting notice requirement for interconnecting entities to interconnecting telephone exchange service providers.* We modify the copper retirement direct notice requirement for providing notice to interconnecting entities by limiting that requirement to providing notice to telephone exchange service providers that directly interconnect with the incumbent LEC’s network. We also afford incumbent LECs some flexibility in the manner in which they provide notice of planned copper retirements to entitled recipients by permitting them to provide notice via web posting to the extent the affected interconnected carriers have agreed to receive notice in this manner.

53. In eliminating the requirement that direct notice be provided to all entities that directly interconnect with the incumbent LEC’s network, we return to the pre-2015 requirement that such notice be provided only to directly interconnecting telephone exchange service providers. We agree with commenters that argue that requiring direct notice to all entities that

interconnect with the incumbent LEC's network is overbroad, encompassing multiple interconnected entities that are not affected by copper retirements. Requiring that direct notice be provided only to telephone exchange service providers that directly interconnect with the incumbent LEC's network achieves an appropriate balance between the needs of interconnecting carriers that purchase either copper inputs or services provisioned over copper facilities and the need to minimize regulatory burdens on incumbent LECs that affect their ability or incentive to deploy next-generation facilities.

54. To further reduce regulatory burdens and modernize our process, we allow incumbent LECs to post notices of copper retirements on their website in lieu of direct notice to interconnecting telephone exchange service providers where the incumbent LEC can certify that the interconnecting telephone exchange service provider agreed to that method of notice. We agree that for incumbent LECs who maintain webpages on which they post network change notices, providing notice via web posting is efficient and is reasonably calculated to provide expeditious notice to affected interconnecting carriers. This change aligns with our process for non-short-term network changes.

55. Regardless of which method of notice the incumbent LEC chooses, consistent with the pre-2015 requirements, as well as the current short-term network change requirements, incumbent LECs must provide notice to interconnecting telephone exchange service providers at least five business days in advance of filing with the Commission. Further, consistent with the pre-2015 requirements, the incumbent LEC must include with its filing with the Commission a certificate of service to demonstrate that it has provided the required direct notice to interconnecting telephone exchange service providers. This certificate of service effectively replaces the certification previously required by the *2015 Technology Transitions Order*, which we eliminate as moot. As a result, AT&T's request that the Commission pare down the various

certifications required by the network change disclosure rules, is also rendered moot.

56. *Eliminating unnecessary governmental notices.* We eliminate the requirement that incumbent LECs provide direct notice of planned copper retirements to state commissions, governors, Tribal Nations, and Department of Defense. When the Commission adopted these direct notice requirements in 2015, it was done to synchronize the notice requirements for copper retirements with those for section 214(a) discontinuances. However, discontinuances present a very different set of concerns because of the potential for loss of service and/or functionality, thereby justifying greater notice than mere changes to the facilities over which an incumbent LEC provides its services. A number of commenters have stated that providing copper retirement notices to governmental entities beyond the Commission is burdensome.

57. States and Tribal Nations that have regulatory authority over copper and wish to mandate notice are able to do so without the need for an across-the-board Commission rule. We thus disagree with NARUC that eliminating the requirement of direct notice to government entities might “handicap[] State options to address real issues that can arise in the wake of a natural disaster and in the wake of technology transitions.” That in some cases such entities lack regulatory authority over or take a deregulatory approach to network changes shows that a Commission mandate is in many cases unnecessary and imposes a burden for no reason. With regard to Tribal Nations, Verizon asserts that incumbent LECs lack sufficient information to determine whether a copper retirement affects areas within a particular Tribal nation’s boundaries. We further find that requiring direct notice of planned copper retirements to the Department of Defense serves no regulatory purpose. The Department of Defense has no regulatory or consumer protection role in the context of copper retirements. Moreover, copper retirements do not themselves present an increased cybersecurity risk. In other words, we disavow the Commission’s prior finding that keeping the Department of Defense informed of

planned copper retirements was warranted because of “the increased cybersecurity risks posed by IP-based networks.” A transition from copper to fiber does not necessitate a transition to IP-based networks and does not change a network’s cybersecurity risk. NTIA, however, urges us to retain this notice requirement because the “Department of Defense is a major and critical user of telecommunications services.” Although true, it does not explain why the Department of Defense should be notified of copper retirements that affect other users. Moreover, we find a notice requirement to keep the Department of Defense apprised as a customer is unnecessary because we are lifting barriers that currently prevent carriers from discussing network changes with their customers, and the record shows that carriers have adequate incentives to negotiate contract provisions addressing such changes with government customers.

58. *Eliminating additional content requirement added in 2015.* By eliminating the section of the rule requiring direct notice of copper retirement to retail customers, we are also eliminating the requirement that incumbent LECs include in their copper retirement notices “a description of any changes in prices, terms, or conditions that will accompany the planned changes.” No commenters addressed this specific issue in support of or in opposition to the potential elimination of § 51.332. Consistent with the other reduced notice requirements we adopt herein, we find this prescriptive content requirement has no bearing on the type of notice the Commission correctly recognized section 251(c)(5) was intended to provide, i.e., changes in “network design, technical standards and planned changes to the network” when first implementing this provision. As such, we conclude that it imposes an unnecessary regulatory obligation on incumbent LECs beyond the scope of the statutorily mandated notice process.

59. *Rejecting requests to further streamline notice requirements.* We reject requests to further streamline our copper retirement notice requirements. First, we decline to do away altogether with the direct notice requirement, as some in the record suggest. Because an

incumbent LEC's copper retirement could significantly impact an interconnected competitive carrier's ability to continue providing certain services to its customers, it remains an important requirement. Requiring every competitive LEC to monitor every notice of network change published by the Commission, as would be necessary absent a direct notice requirement, would be unreasonable for these service providers. Moreover, because we are shortening the notice period for copper retirements today, continuing to require direct notice strikes an appropriate balance between facilitating incumbent LEC network changes and the needs of affected interconnecting carriers. Ensuring that interconnecting service providers will continue to receive copper retirement notices directly from incumbent LECs will afford those entities as much time as possible to convey necessary information to their customers who will be impacted by the incumbent's planned copper retirement.

60. Similarly, we reject Frontier's suggestion that we exempt from our copper retirement rules those copper retirements occurring in areas where the Commission is funding broadband deployment, e.g., in areas receiving Connect America Fund support. The fact that broadband will be deployed in such areas over time does not obviate the benefit of receiving timely notice of impending copper retirements to the parties entitled to such notice under our rules. Recipients of CAF Phase II model-based support have to deploy broadband to 40% of supported locations by the end of 2017, increasing by 20% each year until they reach 100% by the end of 2020. As a result, to the extent copper retirement rules require notice, those notifications are likely to be spread over time.

(ii) Reducing copper retirement waiting periods.

61. *Reducing the standard waiting period for copper retirements from 180 days to 90 days after the Commission issues its public notice.* We reduce the generally applicable 180-day waiting period for copper retirements to a 90-day waiting period, which was the waiting period

prior to the Commission's 2015 amendments to the copper retirement rules. We find that a 90-day waiting period after the Commission releases a public notice of the filing meets the needs of interconnecting carriers and other interested entities while minimizing the risk of undue delay for incumbent LECs. In reinstating that provision in § 51.333(b), we revise the language both to more accurately reflect that the copper retirement process, like all network changes, is a notice-based process and to make the treatment of copper retirement notices consistent with that of short-term network change notices in the same rule.

62. The record demonstrates that the current, longer waiting period has already slowed down affected incumbent LEC deployment plans, and caused uncertainty for at least one carrier's planned broadband buildout. The return to the 90-day waiting period is particularly appropriate in light of the other changes we adopt today that reduce the need for a longer waiting period, including allowing incumbent LECs to share information about planned network changes prior to providing the requisite public notice, and reinstating the previously applicable objection procedures, actions that address competitors' concerns that 90 days is not sufficient time to accommodate copper retirements involving large numbers of circuits. As a result, the 90-day notice period we adopt today best achieves the balance of "adequate, but not excessive," notice.

63. The copper to fiber transition has been ongoing for the past fourteen years. The timing and rates of transitions or the decision to transition in the first instance vary on a carrier-by-carrier, and even on a case-by-case basis for each individual incumbent LEC. While we recognize that copper loops are not obsolete, competitive LECs have had ample notice that many legacy copper networks are likely to be retired at some point in the not-so-distant future. It is in this context that we must evaluate commenters' claims that they continue to need extensive notice of copper retirements so that they can, if necessary, deploy their own fiber. Longer

periods or more open-ended structures requested by some commenters would pose the risk of holding incumbent LEC networks hostage indefinitely, a result explicitly sought by at least one commenter. Such a result would run counter to the expressed goals of this proceeding to accelerate next-generation network deployment, and in any case longer periods are unwarranted.

64. Certain commenters refer to the reduced 90-day waiting period as a “speeded-up time frame.” To the contrary, we simply return to the timeframes that applied for more than a decade, before the Commission adopted the *2015 Technology Transitions Order*. By contrast, the extended notice periods sought by competitive LEC commenters constitute the very “overextended advance notification intervals” the Commission was concerned might needlessly “delay the introduction of new services, provide the interconnecting carrier with an unfair competitive advantage, or slow the pace of technical innovation.”

65. We decline to adopt certain incumbent LEC requests that the 90-day waiting period begin to run when the incumbent LEC files its copper retirement notice or, in the alternative, to require that we release a public notice within a specified period of time. Incumbent LEC commenters assert that delays in our processing of filings can result in delays in implementation. However, commenters do not point to any specific instance in which a planned copper retirement had to be delayed due to the timing of our release of the relevant public notice. Moreover, having the waiting period run from the date we release a public notice of the filing, as has been the case for more than two decades, affords Commission staff the necessary opportunity to review filings for mistakes and/or non-compliance with the rules. Indeed, Commission staff routinely contacts filers to clarify or correct information contained in filings or to add required information that is missing, and this ability is necessary to ensure the integrity of the filing process. Otherwise, incumbent LEC notices could fail to contain the required information at the time of filing, depriving notice recipients of information they need to accommodate the network

change. Incumbent LEC commenters have not specified any reason why, or demonstrated any harm from, timely release of a copper retirement public notice based on the incumbent LEC's own planned implementation date as specified in the notice.

66. *Adopting expedited 15-day waiting period where no customers are served over affected copper.* We further amend our rules to provide for a 15-day waiting period after Commission release of its public notice of an incumbent LEC's filing for copper retirements where the affected copper facilities are no longer being used to provide service. As AT&T explains in its comments, this streamlined notice process, which received support from incumbent and competitive LECs alike, is appropriate because it will not impact any interconnecting carriers or require the transition of any services.

(iii) Reinstating objection procedures for copper retirement notices.

67. Because the rules we adopt today reduce the waiting period from 180 days to 90 days, we reinstate the objection procedures previously applicable to copper retirement notices prior to the *2015 Technology Transitions Order* and currently applicable to short-term network change notices. We therefore find it unnecessary to retain the good faith communication requirement adopted in 2015. In the rare instances in which a competitor may need additional information or be unable to make the accommodations necessary to continue to provide service to its customers within the 90 day notice timeframe, the objection procedure will provide a mechanism to provide more time to address concerns. Before the 2015 changes went into effect, carriers infrequently invoked the objection procedures, but reinstating the procedure affords some measure of protection to competing providers facing extenuating circumstances. The objection procedure further serves as an incentive for an incumbent LEC to work closely with competitive LECs to ensure the competitive LECs have the information they need to

accommodate the planned copper retirement within the 90-day period, a role that was filled by the good faith communication requirement when the Commission eliminated the objection procedures applicable to copper retirement notices in 2015. Moreover, these procedures allow objections only to delay the planned retirement up to a total of six months from the initial public notice under our rules. In no case, however, do they prevent the retirement from occurring or extend the timeframe beyond the six-month period.

68. We are unpersuaded by Windstream's assertion that it is necessary to retain the requirement that incumbent LECs work in good faith with interconnecting entities to provide information necessary to assist them in accommodating planned copper retirements without disruption of service to their customers. A competitive LEC that feels an incumbent LEC is engaging in anticompetitive behavior by not providing necessary information has two avenues of recourse. First, the objection procedures we reinstate today provide a mechanism for competitive LECs to seek any additional information they need to allow them to accommodate the planned transition. Second, the competitive LEC may assert a claim under section 201(b) of the Act that the incumbent LEC is engaging in an unjust or unreasonable practice.

69. Finally, we are unpersuaded by unsubstantiated incumbent LEC concerns that competitive LECs might use the objection procedures to engage in anti-competitive behavior. Indeed, the Commission is unaware of, and incumbent LEC commenters do not point to, any such instances occurring under the pre-2015 copper retirement objection procedure rules, or the current short-term network change rules, which have always contained an objection period. To the extent this occurs in the future, we again make it clear that we will not tolerate such efforts and that objections proffered for anticompetitive purposes can expose the objector to sanctions. We thus conclude that reinstating the objection procedures previously applicable to copper retirement notices maintains an appropriate balance between the needs of incumbent and

competitive LECs and is consistent with Commission precedent.

(iv) Reinstating “deemed denied” objection resolution for copper retirements.

70. We also reinstate the objection resolution procedures applicable to copper retirements that were eliminated by the *2015 Technology Transitions Order*. Absent Commission action, an objection to a copper retirement notice will be deemed denied ninety days after the Commission releases its public notice of the incumbent LEC’s filing. By reinstating this provision, we further streamline the copper retirement process and obviate the concerns expressed by some commenters that competitors might use the objection procedures for anti-competitive reasons.

d. Adopting Streamlined Copper Retirement Notice Procedures for Force Majeure Events

71. As recent events have shown, it is vital that we do everything we can to facilitate rapid restoration of communications networks in the face of natural disasters and other unforeseen events. We recognize that when networks are damaged or destroyed by devastating force majeure events such as Hurricanes Harvey, Irma, and Maria, the top priority for service providers must be to restore their networks and service to consumers as quickly as possible rather than jump through regulatory hoops. Regulatory processes that could make sense in normal times may cause unnecessary delay when exigent circumstances arise. To provide incumbent LECs the flexibility to restore service as quickly as possible, today we streamline our copper retirement procedures for cases of natural disasters or other unforeseen events. To be clear, we revise only our network change notification rules that govern how incumbent LECs notify other carriers of copper retirements, and we do not revisit our existing procedures for emergency discontinuances of service.

72. The record shows that as incumbent and competitive LECs recognize, incumbent LECs need the flexibility to restore service as quickly as possible in the case of unforeseen events and should not be rendered non-compliant by actions beyond their control. For example, when a natural disaster such as a hurricane damages an incumbent LEC's facilities, or a copper line is inadvertently cut during a road work project, an incumbent LEC must, first and foremost, take whatever action is necessary to restore impacted service as quickly as possible. We find that it makes more sense to allow the prompt installation of replacement facilities than to require the incumbent LEC to first repair the damaged copper lines, if the incumbent LEC determines that is the best course of action, only to subsequently expend additional resources to then retire and replace those facilities later. The same logic applies when state or municipal authorities notify an incumbent LEC that due to an impending project, the incumbent LEC must move its copper lines within a shorter period of time than might allow the carrier to comply with the advance notice and waiting periods required by the Commission's rules.

73. With respect to force majeure events, this new provision applicable to copper retirements codifies streamlined procedures already available to certain incumbent LECs pursuant to a set of waiver orders, the first of which was adopted in the wake of Hurricane Katrina. By codifying these waivers for copper retirements and extending them to all incumbent LECs alike, we adopt well-tested requirements, provide greater regulatory certainty, and promote competitive neutrality among incumbent LECs.

74. Turning to the language of the rule provision we adopt, we specifically revise the rules governing copper retirement to (i) exempt incumbent LECs from advance notice and waiting period requirements for copper retirements that are required as a direct result of force majeure events such as the "emergencies" identified in § 79.2(a)(2) of our rules (other than school closings, bus schedule changes, and weather warnings or watches), as well as terrorist

attacks, and (ii) require that an incumbent LEC give notice of a copper retirement resulting from a municipal mandate or third-party damage or destruction to copper lines as soon as practicable, and permit a reduced waiting period commensurate with the amount of notice provided to the incumbent LEC by the municipal authority. Political or economic events (e.g., Commission action, a market crash) also will not qualify as force majeure events for purposes of this rule.

75. Under the rules we adopt today, in the case of a force majeure event for which an incumbent LEC invokes its disaster recovery plan, the incumbent LEC will be exempted during the period when the disaster recovery plan is invoked, for up to 180 days, from all advance notice and waiting period requirements associated with copper retirements that are a direct result of damage to the incumbent LEC's network infrastructure caused by the force majeure event. Certain carriers undertook disaster response planning in the wake of Hurricane Katrina and in response to the Administration's expressed hope for greater national preparedness. The term "disaster recovery plan" as used here is intended to refer to a disaster response plan developed by an incumbent LEC for the purpose of responding to a force majeure event. We find that in the event of a disaster, requiring compliance with these rules would impede restoration efforts and delay recovery. However, during the exemption period, as soon as practicable after the force majeure event occurs and the disaster recovery plan is invoked, the incumbent LEC must comply with § 51.325(a)'s public notice requirement and include in such public notice the date on which the carrier invoked its disaster recovery plan. It must also communicate with other interconnected telephone exchange service providers to ensure that such carriers are aware of any changes being made to the incumbent LEC's networks that may impact those carriers' operations, as soon as practicable. No further notice requirements apply.

76. Should an incumbent LEC require relief longer than 180 days after the disaster recovery plan is invoked, the incumbent LEC must request further relief authority from the

Commission. Any such request must be accompanied by a status report describing the incumbent LEC's progress and providing an estimate of when the incumbent LEC expects to be able to resume compliance with copper retirement disclosure requirements. In the event of circumstances triggered by third parties, such as a municipal mandate or inadvertent third party cuts to the incumbent LEC's copper lines, the incumbent LEC's direct and public notice must comply in all respects with the copper retirement notice rules, except that the notice must: (1) incorporate a reduced waiting period commensurate with the specific circumstances at issue; (2) provide an explanation of the particular circumstances; and (3) explain how the incumbent LEC intends to minimize the impact of the reduced waiting period on interconnected carriers.

77. In the event that unforeseen circumstances arise warranting relief that falls outside of the force majeure rules we adopt, the Wireline Competition Bureau has delegated authority to address waiver requests. However, we reject CWA's argument that the Commission should proceed solely via waiver in this context. The waiver process is slower and less predictable than a rule, which is especially problematic when carriers need to make quick decisions in exigent circumstances.

78. Finally, we disagree with CALTEL that this issue requires further comment before we adopt this limited exemption. As discussed above, the limited force majeure exemption simply codifies and makes uniform across carriers the waivers that have been available to certain incumbent LECs since 2005. We are unaware of any instances in which carriers have sought to invoke the waiver provisions in inappropriately broad circumstances. We are also unaware of any instances in which: (1) network change notices filed after an incumbent LEC has invoked its disaster recovery plan has caused confusion among interconnecting carriers, or (2) the incumbent LEC has taken longer than 180 days to implement the necessary repairs or network changes. Moreover, the Commission staff reviews all network change notices and will

help guard against incumbent LECs invoking this exemption improperly.

e. Updating Filing Titles Applicable to Copper Retirements

79. We update the titles available to incumbent LECs for use in labeling their copper retirement filings. Section 51.329(c)(1) sets forth titles that incumbent LECs must use to label their network change disclosure filings. The Commission added the titles applicable to copper retirement filings in 2016 “to alleviate potential confusion.” Those newly-added titles specifically reference § 51.332, which we eliminate today. Because we add the copper retirement notice requirements back into § 51.333, where they originally resided, we revise the copper retirement-related titles set forth in § 51.329(c)(1) to correctly refer to § 51.333.

C. Section 214(a) Discontinuance Process

80. Today we take several important steps to eliminate unnecessary regulatory process encumbrances when carriers decide to cease offering legacy services that are rapidly and abundantly being replaced with more innovative alternatives. Section 214(a) requires carriers to obtain authorization from the Commission before discontinuing, reducing, or impairing service to a community or part of a community. As a matter of convenience, unless otherwise noted this item uses the term “discontinue” or “discontinuance” as a shorthand for the statutory language “discontinue, reduce, or impair.” To be clear, section 214(a)’s discontinuance requirements apply solely to telecommunications services, and to interconnected VoIP service to which the Commission has extended section 214(a)’s discontinuance requirements. Section 214(a) discontinuance requirements would not apply where the Commission forbears from application of these rules. These requirements do not apply to any other services a carrier may offer.

81. The reforms we adopt reflect the reality of today’s marketplace. As USTelecom and other commenters in this proceeding observe, demand for the kinds of low-speed services that carriers generally provide over legacy networks is rapidly decreasing, as consumers move

towards modern, competing alternatives. As of June 2016, interconnected VoIP lines accounted for nearly half of all retail voice telephone service connections in the United States. Section 9.3 of our rules defines “interconnected VoIP.” Non-incumbent LECs operate more than three quarters of these approximately 60 million interconnected VoIP lines. And mobile voice service subscriptions now outnumber end-user switched access lines in service by more than five-to-one. This gap is widening. As the Wireline Competition Bureau (Bureau) recently found, between 2013 and 2016, “interconnected VoIP subscriptions increased at a compound annual growth rate of 10%, while mobile voice subscriptions increased at a compound annual growth rate of 3%, and retail switched access lines declined at 11% per year.” Similar trends are affecting legacy low-speed data services, which have largely been abandoned by consumers. Our data show that between December 2014 and June 2016 the proportion of all fixed broadband consumer connections with a download speed between 200 Kbps and 1.544 Mbps has fallen from 6 percent to 3 percent.

82. These developments drive our efforts to streamline the section 214(a) discontinuance process for legacy services. Section 214 directs the Commission to ensure that a loss of service does not harm the public convenience or necessity. In determining whether a discontinuance will harm the public interest, the Commission has traditionally utilized a five-factor balancing test to analyze: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) increased charges for alternative services; and (5) the existence, availability, and adequacy of alternatives. Increasing competition and deployment of higher-speed next-generation services allow most consumers to purchase services that are superior to legacy services. As a number of commenters note, these developments have greatly reduced the risk of harm to consumers stemming from the discontinuance of legacy services.

83. The record also makes clear that the Commission’s current section 214(a) discontinuance rules impose needless costs and delay on carriers that wish to transition from legacy services to next-generation, IP-based infrastructure and services. Even relatively short delays or periods of unpredictability can, in the aggregate, create significant hurdles for providers who seek to upgrade hundreds or thousands of lines across their service territory. As Verizon explains, excessive restrictions on the discontinuance of legacy services harm both consumers and competition alike “as they delay the ability of providers to shift resources from legacy voice services to the more modern offerings that consumers demand.” For example, Verizon estimates that that “the necessary equipment to provide a single fiber based DS0 equivalent at a customer location can cost more than \$30,000” and observes that “[p]roviders who are unable to discontinue these services efficiently would be faced with the cost of maintaining them over fiber should they choose to retire copper, which could divert resources that could be used for newer services.” For these reasons, as described below, we streamline and expedite our processes for section 214 discontinuance applications for a variety of legacy services.

1. Expediting Applications that “Grandfather” Low-Speed Legacy Services for Existing Customers

84. First, we streamline the approval process for discontinuance applications to grandfather low-speed (i.e., below 1.544 Mbps) legacy services. “Grandfathering” a service under section 214 refers to a request by a carrier for authorization to stop accepting new customers for a service while maintaining that service to existing customers. Throughout this section we use the terms “grandfathering,” “grandfather,” and “grandfathered” interchangeably to refer to this type of section 214(a) application. Specifically, we adopt a uniform reduced public comment period of 10 days and an automatic grant period of 25 days for all carriers

seeking to grandfather legacy low-speed services for existing customers. The record supports our conclusion that streamlined processing of these applications will remove unnecessary regulatory delay for carriers seeking to discontinue legacy services with no harmful impact to existing customers.

85. *Streamlined Comment and Auto-Grant Period.* There is broad support in the record for reducing the processing period for applications to grandfather low-speed legacy services to a 10-day comment period and a 25 day auto-grant period. The Commission's rules provide for a 30 day comment period and a 60 day auto-grant period for service discontinuance applications filed by dominant carriers. For non-dominant carrier applications, comments are due within 15 days of the release of a public notice announcing the filing, and there is a 30 day auto-grant period. Commenters urge the Commission to make the discontinuance process easier for carriers seeking to replace their legacy services with next-generation services, especially to the extent that such discontinuances do not impact those using the service, as is the case with grandfathering.

86. The record demonstrates that longer processing timelines for grandfathering applications are unnecessary to protect consumers from potential harm stemming from discontinuances, and that our current discontinuance rules may unnecessarily impede the deployment of advanced broadband networks by imposing costs on service providers who seek to upgrade legacy infrastructure. Our section 214 discontinuance provisions are intended to protect the public by ensuring that consumers are not harmed by loss of service as a result of a discontinuance, and we will normally authorize a discontinuance unless it is shown that affected customers would be unable to receive a reasonable substitute service. However, as numerous commenters observe, national marketplace trends show that businesses and consumers alike are moving away from legacy services and toward modern alternatives. In both the residential and

enterprise services marketplace, incumbent LECs now face widespread competition from numerous intermodal competitors offering services that compete with legacy services. These competitive forces have made substitute services readily available to the majority of consumers, mitigating any potential harm that might result from legacy services being grandfathered.

87. The record also makes clear that the section 214(a) discontinuance rules impose costs on carriers that wish to transition from legacy services to next-generation infrastructure, slowing the deployment of advanced services. As Verizon explains, processing times for 214(a) discontinuances “can delay services upgrades considerably.” Similarly, ITIF observes, that “[a]llowing faster approval of exit applications will speed the transition away from legacy services and towards next generation IP-based networks.” We find that affording carriers a more rapid glide path to transition away from legacy services they no longer seek to offer will reduce costs and promote the availability of innovative new services that benefit the public. By balancing the needs of consumers and carriers to optimize the deployment of new network technologies, these common-sense reforms help us better fulfill our section 214(a) statutory obligations.

88. We disagree with commenters that argue that the reduced comment and auto-grant periods will provide insufficient opportunity for public comment, or will otherwise prevent the Commission from fulfilling its statutory obligation to ensure that discontinuances do not harm the public interest. One commenter goes so far as to argue that grandfathering applications in general run afoul of Commission precedent because the fundamentals of common carriage dictate that telecommunications services must be offered to all comers. On the contrary, the Act affords the Commission broad flexibility in administering the section 214 discontinuance process to serve the public interest, and the Commission has long considered applications to grandfather services pursuant to section 214(a) or permitted carriers to grandfather certain service offerings

in their FCC tariffs. Relatively few customers remain on legacy services, and because existing customers will be grandfathered under this section of our rules, they are unlikely to be harmed by these new processes. Moreover, a 10-day comment period will permit affected customers sufficient time to raise any applicable concerns with the Commission. Finally, nothing in the rule we adopt today changes a carrier's obligations to directly notify its customers of its plans to grandfather a service at, or before, the time it files its grandfathering application with the Commission. Thus, to the extent customers have concerns about the grandfathering application, they will be able to present concerns both during the 10-day comment period and prior to that period while the Commission's release of the public notice is pending. Similarly, we conclude that a 25-day auto-grant period will provide the Commission with ample time to evaluate any objections to the grandfathering application, and, if necessary, remove the application from streamlined treatment to conduct a more searching review of the application or to give the carrier and objecting party more time to resolve its issues.

89. Our reform is limited in scope. Nothing in the reduced processing timeframes we adopt today alters our obligation under section 214(a) to ensure that discontinuances, including those which occur when a service is grandfathered, do not run contrary to the "public convenience and necessity." These streamlining measures do not in any way change the methodology we use to conduct our public interest evaluation or the criteria upon which it is based. We continue to apply our traditional five-factor balancing test to all section 214 discontinuance applications, including the specific grandfathered applications at issue here, regardless of which review timeline applies. If a grandfathering application subject to these new rules raises substantial questions, Bureau staff may remove it from streamlined processing just as it can under our prior approval timeframes.

90. We reject the proposals of Windstream and Ad Hoc Telecom Users Committee to

prescribe specific terms and conditions carriers must include in their grandfathering plans. Similarly, we decline to adopt specific requirements unique to grandfathered services for government customers as sought by NTIA for the same reasons we discuss in paras. 106-07, *infra*. We intend to streamline processing, not impose delay and complexity by interfering with a carrier's specific business plans or how it intends to continue serving its existing customers. As AT&T notes, carriers may have limited ability to provide legacy services that are being phased out, and in any event, requiring carriers to allow moves, additions, and/or changes to grandfathered services would "force carriers to invest resources in outdated technology rather than investing in deployment of next-generation services," which runs contrary to the purpose of the reforms we adopt today. To the extent affected customers believe the terms of a carriers' proposed grandfathering application raises concerns, customers can raise these concerns during the public comment period.

91. *Uniform Treatment for Dominant and Non-Dominant Carriers.* Our section 214 discontinuance rules have traditionally applied different comment and automatic grant periods to dominant and non-dominant carriers. However, in light of the technological and competitive dynamics of today's modern communications landscape, we find it is unnecessary to maintain a distinction between dominant and non-dominant carriers in the context of section 214 applications to grandfather low speed legacy services.

92. *Eligible Low-Speed Legacy Services.* We make the streamlined approval process we adopt available to all carriers seeking to grandfather any voice and data services at speeds below 1.544 Mbps. We recognize that legacy services, in general, constitute numerous services at speeds equal to or greater than 1.544 Mbps and over technologies other than TDM, some of which could be characterized as low-speed. Nevertheless, solely for purposes of the rules we adopt herein today, we apply our streamlined criteria only to those low-speed legacy services

lower than a DS1 speed as specified in the *Wireline Infrastructure NPRM*. As the record indicates, demand for these services is falling as consumers migrate to more advanced services that offer greater speed and functionality or to competitive alternatives such as IP or wireless. We find broad record support for including both voice and data services meeting our speed threshold. Indeed some commenters suggest substantially broadening the scope of services covered by these reduced timeframes to include all grandfathered services or all grandfathered legacy services, regardless of speed. We decline to extend our streamlined grandfathering provisions to additional services or speed thresholds at this time. We find that limiting our streamlined-treatment to legacy voice and data services below 1.544 Mbps strikes the appropriate balance to provide relief to carriers who wish to transition away from the provision of legacy services for which there is rapidly decreasing demand, while at the same time ensuring that potential consumers of these services have readily available alternatives.

2. Expediting Applications to Discontinue Previously Grandfathered Legacy Data Services

93. Second, we streamline the discontinuance process for applications seeking authorization to discontinue legacy data services that have previously been grandfathered for a period of at least 180 days. We define legacy data services for the purpose of these new rules as data services below 1.544 Mbps.

94. *Streamlined Comment and Auto-Grant Periods.* We adopt a uniform reduced public comment period of 10 days and an auto-grant period of 31 days for all carriers. Discontinuing carriers that wish to avail themselves of this streamlined process may do so by including a simple certification that they have received Commission authority to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. This certification must reference the file number of the prior Commission authorization to grandfather

the services the carrier now seeks to permanently discontinue.

95. The record supports reducing the public comment period to 10 days and the auto-grant period to 31 days for previously-grandfathered legacy data applications. Streamlining the comment and auto-grant periods for this class of discontinuance applications will benefit both industry and consumers by speeding the retirement of outdated services and the transition to next-generation networks. Carriers that seek to completely retire legacy data services that have previously been grandfathered will be better able to focus resources on more innovative, technologically advanced services, while simultaneously protecting customers of these previously grandfathered legacy data services.

96. A 10-day comment period for these applications will provide customers with ample notice of the impending discontinuance of their service, as the initial grandfathering of the service is a clear signal to these customers that such service is likely to be discontinued in the future. This is particularly true considering our requirement that such services be grandfathered for a minimum of 180 days prior to the filing of a discontinuance application. Thus, we disagree with commenters that claim that this shortened comment interval will fail to give impacted customers sufficient notice, or suggest merely knowing that a service is grandfathered does not prepare retail or wholesale customers for the subsequent end to that service. In its comments, Harris Corporation appears to mistakenly believe we have proposed to allow the discontinuance to go into effect ten days after issuance of a public notice. It also appears to mistakenly conflate the network change notification process with the section 214(a) discontinuance process. In reality, the 180-day minimum period for grandfathering legacy data services will give these previously-grandfathered customers more notice and a far longer timeframe within which to consider alternative services than existed under our prior rules. And as competition continues to grow and providers offer new and better services over modern broadband facilities, it is less

likely that customers will experience a harmful service loss or be unable to secure a reasonable substitute service for legacy services at any rate.

97. The 31-day auto-grant period will provide us sufficient time to determine whether to remove an application from automatic grant if we find that such application raises concerns, and carriers and their customers are unable to resolve their issues prior to the end of the 31-day period. We are not persuaded by arguments claiming that we fail to account for the need for longer timeframes to transition customers to new or alternative services, potentially disrupting and hampering mission-critical communications, and pointing to past service transitions that have taken more than a year to complete. Many discontinuances are already subject to a 31-day auto-grant period, and commenters have failed to show why this existing interval is a problem. Moreover, we expect that in the case of discontinuances involving multiple customer locations that require lengthy transition periods to implement, particularly of the type concerning these commenters, the discontinuing carrier has strong incentives to work with its customers to establish a transition schedule that is seamless, physically attainable, and comports with the service agreement or master contract governing the terms of service between that customer and carrier. After all, the carrier is in business to provide service, and in today's increasingly competitive business services marketplace, the incentives to retain and grow existing customer relationships are strong.

98. Similarly, we are not persuaded by commenters' concerns that streamlining the auto-grant period for applications to discontinue previously grandfathered legacy data services may allow carriers to quickly discontinue vital services used by 9-1-1 networks to deliver calls from end users to emergency responders. Carriers' incentives to ensure seamless service transitions for services involved in safety-of-life are even more acute than other types of mission-critical safety-related service arrangements. Nonetheless, we invite customers to comment on

specific applications that raise public safety or other mission-critical safety concerns, where the discontinuance timeframe is too short to accommodate its transition needs, or where the carrier is not working cooperatively to effectuate such a transition. We retain flexibility to address these circumstances on a case-by-case basis.

99. We also decline to grant Verizon’s request that we further shorten the streamlined auto-grant period for applications to discontinue previously grandfathered legacy data services from 31 days to 25 days. Although it is admittedly a judgment call, we would prefer a slightly longer period to evaluate discontinuance applications that impact existing customers than applications that seek to grandfather such customers.

100. Having considered the record, we find that the auto-grant period we adopt today will eliminate needless delay in eliminating these previously grandfathered legacy data services and enable carriers to spend their limited resources on deploying innovative next-generation services. At the same time, we recognize that nothing about our auto-grant timeframe alters our statutory obligation to ensure that these discontinuance applications, like all other discontinuance applications, are not contrary to the public interest, nor does it impact our ability to remove it from streamlined treatment.

101. *Uniform Treatment for Dominant and Non-Dominant Carriers.* We adopt uniform timeframes for all carriers for applications to discontinue previously grandfathered legacy data services for the same reasons we adopt uniform timeframes for grandfathering applications. These legacy data services are characterized by falling demand, and consumers are increasingly abandoning them and adopting more advanced data services with better capability and greater functionality. Moreover, the market for data services as a whole is characterized by increasing competition from a variety of competitive sources, including cable, wireless, and satellite providers, all offering alternative data services that provide, at a minimum, the same

capabilities of these legacy data services. Given these market dynamics, disparate treatment of dominant and non-dominant carriers seeking to discontinue these previously grandfathered services is no longer necessary.

102. *Eligible Previously-Grandfathered Legacy Data Services.* The record supports limiting previously grandfathered legacy data services subject to our new rules to speeds below 1.544 Mbps. Given the falling demand for data services below this speed as consumers migrate to more advanced offerings with higher speeds and greater functionality, we find this to be the appropriate threshold at this time. Moreover, adopting this speed threshold maintains consistency with the rules we adopt today governing low-speed legacy grandfathered services, and will thus avoid any customer and carrier confusion as to which previously-grandfathered data services these new rules apply.

103. We decline to extend these streamlined comment and auto-grant periods to all applications to discontinue any type of grandfathered services, as Verizon suggests. We prefer to proceed incrementally and legacy data services present the most obvious case for the streamlining reforms we adopt given declines in usage and competitive options available. As reflected in the FNPRM, we will explore in greater depth whether to adopt further streamlining reforms for other legacy services.

104. We also decline to limit eligibility to only those applications that include prescribed methods of demonstrating the availability of alternative comparable data services throughout the service area from the discontinuing provider or a third party, as Southern Company Services recommends. Introducing additional requirements that carriers must satisfy before discontinuing low speed legacy data services does not comport with our objectives in adopting new more flexible streamlined rules today. Moreover, we consider the existence of available and adequate alternative services as a part of our five-factor test for evaluating

discontinuance applications. Consequently, there is no need to make these applications unnecessarily arduous by adding redundant and inflexible new content requirements.

105. Finally, we reject Windstream’s proposal to exclude from eligibility previously-grandfathered services that are subject to a specified customer term before that term has expired. Nothing in our rules modifies or abrogates the terms of contracts. Windstream offers no good reason to insert ourselves into contractual disputes.

106. *Special Consideration for Federal, State, Local, and Tribal Government Users.* We also decline to adopt special provisions for applications seeking to discontinue previously grandfathered legacy data services to federal, state, local, and Tribal government users. Although we are sensitive to the budget and procurement challenges that government customers face, as well as other challenges associated with transitioning strategic government applications that use legacy services to alternative next-generation services, these issues are not insurmountable and the record does not support adoption of unique rule-based regulatory requirements to address them. Instead, the record shows that incumbent LECs and other carriers have incentives and a long history of accommodating government customers to avoid costly and dangerous disruptions of service. The record makes clear that carriers discuss service changes with affected government customers “well before the changes are implemented,” and are especially sensitive to the needs of government customers when supplying mission-critical services that implicate emergency response or national security. For example, CenturyLink’s standard agreement for federal government customers obligates CenturyLink to provide “18 months’ notice prior to discontinuing a service covered by that agreement, and/or to deliver an alternative product equivalent to the service being discontinued.” Moreover, as AT&T and others explain any hurdles associated with transitioning large volumes of services, even those considered to be critical, can be overcome through negotiation and coordination between the

carrier and government customers. Indeed, this process is routine for carrier/customer relationships of this size.

107. Because the record shows that any concerns about government entities' transition away from legacy services are better and more appropriately addressed by government customers and their carriers in their negotiated service agreements which necessarily cover service continuity provisions, we decline to adopt special rules for such entities with respect to the discontinuance of legacy services. Based on the record, we believe that negotiated service contracts are the best vehicle for addressing government users' specific concerns and best serve as enforceable protections to address their long-term planning needs. However, we retain authority to take action in individual circumstances where the public interest requires. Having found that negotiated service contracts – which typically provide substantial advanced notice of service discontinuance - are the best vehicle for addressing government users' specific needs and concerns, and because government users are well-placed to come to the Commission with individual cases that require our attention, we find it unnecessary to address NTIA's request that we require the grandfathering of all services received by federal customers prior to a service discontinuance. We note that NTIA has separately filed a petition that remains pending seeking reconsideration or clarification of the *2016 Technology Transitions Order*. The resolution of that petition, as well as NTIA's request for interoperability protection for the CPE used by the federal government, is outside the scope of the decisions we make here.

3. Expediting Applications to Discontinue Low-Speed Legacy Services with No Customers

108. Recognizing that there are minimal concerns when a carrier seeks to discontinue a service which has no customers, we adopt new streamlined processing rules for a specific category of "no customer" discontinuance applications, i.e., applications to discontinue low-

speed legacy services having no customers for the prior 30-day period. Specifically, we adopt a 15-day auto-grant period for applications to discontinue legacy voice and data services below 1.544 Mbps for which the carrier has had no customers and no request for service for at least a 30-day period prior to filing the application. Consistent with the streamline processing measures we adopt for other categories of low-speed legacy service applications today, because demand for these services is falling it makes no sense to prevent carriers from eliminating these services and any associated costs from their business processes as rapidly as possible.

109. Under the current rules, carriers can apply for streamlined processing to discontinue any service if they have no customers taking that service and have had no requests for that service for the previous 180 days. This rule is currently pending OMB approval and is not yet effective. Such applications will be automatically granted 31 days after the Commission places them on public notice unless the Commission has removed the application from streamlined processing. The Notice sought comment on whether to maintain and further streamline the broadly applicable “no customer” rule by reducing the 180 day period to 60 days, or even shorter, and whether any other changes to this rule should be made. The record supports adopting a shorter “no customer” period, as well as reducing the auto-grant period for “no customer” applications. When there are no customers of a service, and no prospective customers have requested a service for 30 days, there is little or no public interest for the section 214 discontinuance process to protect. We are not persuaded by Windstream’s argument that a lengthy “no customer” period is necessary to demonstrate a lack of demand. There is no evidence in the record to suggest that services with no customers and no demand for 30 days are likely to be in demand sometime in the future. We better meet our public interest obligations when needless regulatory delay is eliminated so as to facilitate discontinuance of services that are no longer demanded, freeing up carrier resources for other, more highly demanded services. We

find that a 30-day “no customer” period and a 15 day auto-grant period strikes the best balance between providing additional streamlining and ensuring adequate proof of no further demand.

110. As with today’s other section 214(a) streamlining reforms, we proceed incrementally, and limit this further streamlined processing to those “no customer” applications to discontinue low-speed (i.e. below 1.544 Mbps) legacy voice and data services. Demand for these legacy services has declined precipitously in recent years, and competing services utilizing next-generation technologies are readily available to consumers, minimizing the potential for harm to consumers following the discontinuance of these services. In light of these market forces, we find it appropriate to further streamline the discontinuance process for carriers seeking to discontinue these low-speed legacy services with no customers. However, in the accompanying FNPRM, we seek comment on whether we should adopt this same reduced “no customer” 30-day timeframe and 15 day auto-grant period for all, or some other subset, of “no customer” discontinuance applications.

111. At the same time, we find that the current record is insufficient to consider AT&T’s and CenturyLink’s requests that we should forbear entirely from applying section 214 with regard to any service for which there are no customers. We seek comment on AT&T’s and CenturyLink’s proposal in the accompanying FNPRM.

4. Eliminating Section 214(a) Discontinuance Requirements for Solely Wholesale Services

112. We conclude that a carrier need not seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act when a change in service directly affects only carrier-customers. We address here only changes in wholesale service, such as the discontinuance of one service when others remain available, not the “severance of physical connection or the termination or suspension of the interchange of traffic

with another carrier.” As used in this section, a carrier-customer is a carrier—typically a competitive LEC—that buys wholesale service from another carrier—typically an incumbent LEC—and repackages that service for retail sale to end user customers. Thus, the carrier-customer is both a “customer” (of the incumbent LEC) and a “carrier” (to its retail end users). In so doing, we reverse the decision in the *2015 Technology Transitions Order* regarding when carriers must seek approval to discontinue, reduce, or impair wholesale service provided to carrier-customers.” Our decision today better comports with the text of the Act and Commission precedent, and as the record shows it benefits consumers by eliminating a needless regulatory burden that diverts investment to outdated services. As a result of our decision, we return to the status quo before the *2015 Technology Transitions Order*.

113. As an initial matter, our decision is the best interpretation of the Act and relevant Commission precedent. Our policy decisions must be grounded in the authority the text of the Act grants to the Commission. Section 214(a) states, in pertinent part, “No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby[.]” When determining whether a carrier needs Commission approval to discontinue service, the Act seeks to protect service provided by a carrier to a “community.” The Commission has consistently held that the term “community” in the statute means end users, or “the using public.” Carrier-customers are not the using public; they are intermediaries who provide service to the using public. Carrier-customers are therefore not part of a “community” that section 214(a) seeks to protect from discontinuances. As the Commission noted in *Western Union*, “there are some important differences between this type of relationship and the more usual type involving a carrier and its non-carrier customer.”

114. The *2015 Technology Transitions Order* purported to recognize this statutory limitation, but it failed to heed the constraints of the text and made the carrier responsible for its carrier-customers' customers. According to that *Order*, "under the statute and our precedent it is not enough for a carrier that intends to discontinue a service to look only at its own end-user customers." The *Order* said the carrier must also evaluate "service provided to the community by the discontinuing carrier's carrier-customer." Upon further consideration, we conclude that this was an incorrect reading of the statute's plain language.

115. We return to the interpretation dictated by the plain text of the Act, that a carrier must consider only the end-user community it serves. The customers of the carrier-customer are part of a community: They are the retail end users. But they are not part of a community that the carrier is serving; rather, the carrier-customer is their service provider. The upstream carrier is selling wholesale service to the carrier-customer, and that wholesale service is merely an input that the carrier-customer repackages into a retail service to the end user. It is the carrier-customer, not the carrier, that is providing "service to a community," and therefore it is the carrier-customer, not the carrier, that has an obligation under section 214(a) to seek approval for a discontinuance of the end user's service. And this makes sense given that it is the carrier-customer, not the carrier, that has the relationship with the community through its end-user customers, and it is the carrier-customer, not the carrier, that chooses what facilities to use (its own, the carrier's, or another's) to provide that service to the community. The record strongly supports this interpretation; we disagree with the relatively few commenters who misinterpret section 214 to require carriers to maintain wholesale service for the benefit of someone else's customers.

116. The structure of the Communications Act also supports this interpretation of the duty under 214(a). Congress laid out a carrier's responsibility to its carrier-customers in section

251, and a carrier's duty under section 251(c)(5) complements the carrier-customer's duty under section 214(a). If a carrier makes a network change that would impact the carrier-customer (and correspondingly disrupt retail service to the carrier-customer's end users), it must notify the carrier-customer. This notice gives the carrier-customer adequate time to either find another wholesale supplier or seek approval under section 214(a) to discontinue service to its own end users. Although sections 214(a) and 251(c)(5) are distinct provisions serving distinct purposes (as the former pertains to changes in services and the latter pertains to changes in networks), they nonetheless complement each other to help carriers and carrier-customers protect the using public's ability to obtain and retain service. We therefore disagree with commenters that argue that carriers must both provide network change notifications and obtain approval under section 214 for discontinuing wholesale service solely to a carrier-customer; such an interpretation is contrary to the plain language of section 214 and imposes needlessly duplicative burdens on carriers.

117. Agency precedent largely supports this plain reading of the Act. In case after case after case after case after case, the Commission has declined to require a section 214 discontinuance application before allowing a carrier to change the service offerings available to its carrier-customers. In *AT&T Telpak*, the Commission made clear that section 214 "does not apply" when a carrier continues to offer "like" services to a community, even if carrier-customers would prefer to use a previously offered service. In *Western Union II*, the Commission stated that "the fact that a carrier's tariff action may increase costs or rates," including in that case an action that required a carrier-customer to order different services using different equipment over different facilities, "does not give rise to any requirement for Section 214(a) certification." In *Lincoln County*, the Commission found that the "removal" of particular facilities used by a carrier-customer, as well as the "reconfiguration of facilities and [] re-routing

of traffic” “does not fall within 214 and 214 application is not required.” And in *Graphnet*, the Commission found that “in situations where one carrier attempts to invoke Section 214(a) against another carrier, concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the carrier itself.” Despite the *2015 Technology Transitions Order*’s suggestion to the contrary, both the holdings and dicta in those cases support our conclusion that carriers need not seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act when a change in service directly affects only carrier-customers.

118. We conclude that the Commission erred in *BellSouth*, the only case to require a discontinuance application from an upstream carrier in the absence of end users. There, the Commission acknowledged that carriers had previously been able to change their offerings to carrier-customers without seeking section 214 approval and distinguished those instances by noting that the service at issue “is the subject of a Notice of Proposed Rulemaking in which the Commission tentatively concluded that it is in the public interest to formulate a federal policy to promote the availability of [that] service.” But section 214 neither mentions Commission rulemakings nor ties its scope to such rulemakings, and to the extent *BellSouth* holds otherwise, we overrule it. We also note that the Commission decided *BellSouth* four years before adoption of the 1996 Act, which adopted a notice-based process for wholesale inputs. Therefore, it is clearer today than in 1992 that the interpretation adopted in *BellSouth* is erroneous in light of the 1996 Act addressing obligations of carriers to competitors through statutory provisions other than the discontinuance requirement of section 214. For the reasons discussed herein we conclude that our interpretation today is more consistent with the statutory text and the public interest, and therefore we overrule any precedent to the contrary.

119. To the extent there is any ambiguity in the statutory text or past Commission

precedent interpreting that text, we nevertheless conclude that our reversal of the prior interpretation of section 214(a) in the *2015 Technology Transitions Order* is appropriate because our interpretation better serves the public interest. It fully protects consumers because each carrier is responsible for its own customers. The upstream carrier files 214 applications as needed when its end users are affected, and the carrier-customer files 214 applications as needed when its end users are affected. Moreover, this less burdensome approach to section 214(a) gives full practical effect to section 214(a)'s direction that we ensure that discontinuances do not adversely impact the public interest. In many circumstances the carrier-customer will be able to obtain wholesale service from another source without causing a disruption of service for the end user. As CenturyLink observes, the widespread availability of next-generation substitutes to legacy TDM services makes it unlikely that there will be no available alternative to the discontinued wholesale input. Moreover, this risk of loss of wholesale supply is an incentive for the carrier-customer to itself invest in new infrastructure, which would benefit the public. Insofar as there arise instances in which a community may truly lose a service option (and the upstream carrier would not already be filing a 214 discontinuance application for its own customers), we conclude that the other public benefits to infrastructure investment discussed herein outweigh those costs. Additionally, in circumstances in which the loss of a service input results from a network change by an incumbent LEC, we are able to extend the implementation date for incumbent LEC copper retirements and short-term network changes up to six months from the date of filing where the competitive LEC has made a showing that satisfies our rules. Our network change process under section 251(c)(5) thus provides an additional safety valve that mitigates the likelihood of impact on end-user customers. We thus reject arguments that we should retain the 2015 interpretation predicated on the view that as a practical matter, if a carrier discontinues wholesale service to a carrier-customer, that carrier-customer may be unable to

obtain wholesale service from another provider and may have no choice but to discontinue service to its end users, effectively resulting in a downstream discontinuance of retail service.

120. The prior interpretation diverted investment from network improvements in order to maintain outdated services that the carriers would otherwise discontinue. Requiring carriers to accommodate end user customers with which they have no relationship for services that they are not providing would be unduly burdensome and would likely hinder deployment of new advanced networks. We agree with AT&T that “[i]ntermediating wholesale carriers between carrier-customers and their end users will inevitably lead to wasteful expenditure of wholesale carriers’ resources that could otherwise be put toward furthering technology transitions.”

121. Moreover, as a practical matter, upstream carriers cannot consistently know how the carrier-customers’ end users are using their retail service. An upstream carrier does not typically have a contractual relationship with its carrier-customer’s end users, and it may not know how these customers use their retail service. We disagree with commenters that claim that the upstream carrier can easily ascertain how an end user—with which the carrier has no relationship—uses their service. The consultation process described by the *2015 Technology Transitions Order* was cumbersome and unlikely to adequately inform an upstream carrier absent extraordinary market research expenses. The carrier that provides service directly to end users is in the best position to evaluate the marketplace options available to it and determine the most effective way to provide retail service to its end users. Consequently, it makes the most sense for the carrier that provides service directly to end users to have the responsibility to comply with section 214(a) with regard to the services it provides its customers.

122. We disagree with commenters that argue that we should consider whether discontinuing service to carrier-customers could impede competition or otherwise injure those carrier-customers. The purpose of section 214(a) is not to bolster competition; it is to protect end

users. As the Commission has long held, “concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the [carrier-customer] itself.” Congress added other provisions to the Act in 1996 to promote competition. Even if harms to carrier-customers were relevant to our decision, we conclude that any such harms are outweighed by the benefits to the public described herein. In particular, we note that carrier-customers can mitigate any harms associated with this decision by negotiating with carriers for contractual provisions to protect against the sudden or unexpected loss of wholesale service. We remind carriers that discontinuing a service—whether a section 214 approval is required or not—is not an excuse for abrogating contracts, including contract-tariffs. Further, any costs incurred by carrier-customers under our decision today are the same costs that would have obtained prior to the *2015 Order*.

123. We conclude, based on the text of the statute and the public interest in both spurring deployment of advanced networks and protecting access to existing services, that carriers are not required to seek approval under section 214(a) in order to discontinue, reduce, or impair wholesale service to a carrier-customer.

5. Rejecting Other Modifications to the Discontinuance Process

124. Based on the current record, we reject the proposals by certain commenters to further modify the section 214(a) discontinuance process today. Specifically, we reject NRECA’s request to place additional conditions on the discontinuance of DS1 and DS3 services, and Verizon’s proposal that we impose “shot clocks” for Commission processing of discontinuance applications.

125. *NRECA DS1 and DS3*. We decline NCREA’s request to impose specific requirements related to installation, testing, and pricing of replacement services as conditions to granting carriers’ section 214(a) discontinuance authority for DS1 and DS3 TDM services.

Section 214(a) directs the Commission to ensure that a loss of service does not harm the public convenience or necessity, and applications to discontinue DS1s and DS3s, like discontinuance applications for any service, are subject to the Commission's traditional five-factor test.

NCREA has provided no compelling reason why more burdensome requirements should be imposed on this particular category of services. Our rules already require that carriers that file discontinuance applications provide notice of such applications in writing to each affected customer unless we authorize in advance, for good cause shown, another form of notice. Thus, NCREA's request for a requirement that a carrier provide written notice to customers of planned discontinuance dates is already contained in our rules.

126. *Verizon Shot Clocks.* We decline to adopt Verizon's "shot clock" proposals.

Verizon has failed to demonstrate why the Commission's current processing timeframes warrant adopting such shot clocks. The Commission routinely processes discontinuance applications based on carriers' proposed schedules set forth in their applications, and a 10-day shot clock could preclude the Bureau staff from obtaining a clarification or supplemental information in the case of an incomplete application necessary to issue the public notice. In such cases, the Bureau would be forced to dismiss the application rather than having the flexibility to resolve the issue and process the application but for the shot clock.

127. We further decline to adopt Verizon's proposed 31-day "deemed granted" shot clock for applications that have been removed from streamlined treatment after the initial auto-grant period has been suspended. Applications that are removed from automatic-grant are done so for good reason, primarily to resolve an objection that merits further consideration and review. While we strive to resolve such issues as quickly as possible, often resolution depends on the applicant working with the objecting party to achieve some accommodation. Adopting Verizon's proposal would remove any incentive the carrier had to address a legitimate concern

raised by a commenter, effectively automatically granting the application in an additional 31 days. Doing so would run counter to our statutory responsibility to ensure that proposed discontinuance applications do not harm the public convenience and necessity.

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

128. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the notice of proposed rulemaking, notice of inquiry, and request for comment (*Wireline Infrastructure NPRM*) for the wireline infrastructure proceeding. The Commission sought written public comment on the proposals in the *Wireline Infrastructure NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

129. In the *Wireline Infrastructure NPRM*, the Commission proposed to remove regulatory barriers to infrastructure investment at the federal, state, and local level; suggested changes to speed the transition from copper networks and legacy services to next-generation networks and services; and proposed to reform Commission regulations that increase costs and slow broadband deployment. In so doing, the Commission sought to better enable broadband providers to build, maintain, and upgrade their networks, leading to more affordable and available Internet access and other broadband services for consumers and businesses alike.

130. Pursuant to these objectives, this Order adopts changes to Commission rules regarding pole attachments, network change notifications, and section 214 discontinuance procedures. The Order adopts changes to the current pole attachment rules that: (1) codify the elimination from the pole attachment rate formulas those capital costs that already have been

paid to the utility via make-ready charges, (2) establish a 180-day shot clock for Enforcement Bureau resolution of pole access complaints, and (3) allow incumbent LECs to request nondiscriminatory pole access from other LECs that own or control poles, ducts, conduits, or rights-of-way. The modifications to our pole attachment rules we adopt today will reduce costs for attachers, reform the pole access complaint procedures to settle access disputes more swiftly, and increase access to infrastructure for certain types of broadband providers. The Order also adopts changes to the Commission's part 51 network change notification rules to expedite the copper retirement process and to more generally reduce regulatory burdens to facilitate more rapid deployment of next-generation networks. Finally, the Order adopts rule changes to the section 214(a) discontinuance process that streamline the review and approval process for three types of section 214(a) discontinuance applications, including applications to: (i) grandfather low-speed legacy voice and data services; (ii) discontinue previously grandfathered low-speed legacy data services; and (iii) discontinue low-speed services with no customers. The Order also clarifies that solely wholesale services are not subject to discontinuance approval obligations under the Act or our rules. These rules will eliminate unnecessary regulatory process encumbrances when carriers decide to cease offering legacy services that are rapidly and abundantly being replaced with more innovative alternatives, speeding the transition to next-generation network infrastructure and services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

131. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

132. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

133. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *Wireline Infrastructure NPRM*. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

134. The majority of our changes will affect obligations on incumbent LECs and, in some cases, competitive LECs. Certain pole attachment rules also affect obligations on utilities that own poles, telecommunications carriers and cable television systems that seek to attach equipment to utility poles, and other LECs that own poles. Other entities that choose to object to network change notifications for copper retirement or section 214 discontinuance applications may be economically impacted by the rules in the Order.

135. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could

be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

136. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS). Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date.

137. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose

governments (special districts and independent school districts). The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7.” Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

138. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

139. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has

developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 138 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

140. *Incumbent Local Exchange Carriers (incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 138 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

141. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 138 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer

than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

142. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 138 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

143. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The

closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 138 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

144. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

145. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

146. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules.

Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

147. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: “This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.” The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million. Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

148. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution

systems that convey electric power received from the generation facility or the transmission system to the final consumer.” This category includes electric power distribution, hydroelectric power generation, fossil fuel power generation, nuclear electric power generation, solar power generation, and wind power generation. The SBA has developed a small business size standard for firms in this category based on the number of employees working in a given business. According to Census Bureau data for 2012, there were 1,742 firms in this category that operated for the entire year.

149. *Natural Gas Distribution.* This economic census category comprises: “(1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.” The SBA has developed a small business size standard for this industry, which is all such firms having 1,000 or fewer employees. According to Census Bureau data for 2012, there were 422 firms in this category that operated for the entire year. Of this total, 399 firms had employment of fewer than 1,000 employees, 23 firms had employment of 1,000 employees or more, and 37 firms were not operational. Thus, the majority of firms in this category can be considered small.

150. *Water Supply and Irrigation Systems.* This economic census category “comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses.” The SBA has developed a small business size standard for this industry, which is all such firms having \$27.5 million or less in annual receipts. According to Census Bureau data for 2012, there were 3,261

firms in this category that operated for the entire year. Of this total, 3,035 firms had annual sales of less than \$25 million. Thus, the majority of firms in this category can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

151. *Pole Attachment Reforms.* The Order adopts the *Wireline Infrastructure NPRM*'s proposal to amend § 1.1409(c) of our rules to exclude capital expenses already recovered via non-recurring make-ready fees from recurring pole attachment rates. It also establishes a 180-day "shot clock" for Enforcement Bureau resolution of pole access complaints filed under section 1.1409 of our rules. Finally, the Order interprets sections 224 and 251(b)(4) of the Act in harmony to create a reciprocal system of infrastructure access rules in which incumbent LECs, pursuant to section 251(b)(4) of the Act, are guaranteed access to poles owned or controlled by competitive LECs and vice versa, subject to the rates, terms, and conditions for pole attachments described in section 224.

152. *Network Change Notifications.* The Order adopts changes to the Commission's part 51 network change notification rules to expedite the copper retirement process and to more generally reduce regulatory burdens to facilitate more rapid deployment of next-generation networks. First, the Order finds that § 51.325(c)'s prohibition on incumbent LECs communicating with other entities about planned network changes prior to giving the requisite public notice of those changes pursuant to the Commission's rules impedes incumbent LECs' ability to freely communicate, engage, and coordinate with the parties that will ultimately be affected by those changes. The Order thus eliminates this prohibition. Second, the Order finds that the rules adopted by the Commission in 2015 governing the copper retirement notice process imposed far-reaching and burdensome notice obligations on incumbent LECs that frustrate their efforts to modernize their networks. The Order revises these rules and returns to the

Commission's longstanding balance to help carriers get more modern networks to more Americans at lower costs.

153. Specifically, the Order: (1) eliminates de facto retirement from the definition of copper retirement; (2) reduces the scope of direct notice by eliminating notice to retail customers and government entities, and returning to direct notice to directly interconnecting "telephone exchange service providers" rather than all directly interconnected "entities"; (3) replaces the detailed certification requirements with a generally-applicable certificate of service; (4) eliminates the requirement that copper retirement notices include "a description of any changes in prices, terms, or conditions that will accompany the planned changes"; (5) reduces the waiting period from 180 days to 90 days generally but to 15 days where the copper being retired is not used to provision service to any customers; (6) reinstates the pre-2015 objection procedures and eliminates the good faith communication requirement; (7) reinstates the pre-2015 objection resolution "deemed denied" provision; and (8) precludes the need to seek a waiver as a result of situations beyond an incumbent LEC's control by adopting flexible force majeure provisions.

154. *Section 214(a) Discontinuances.* The Order adopts the *Wireline Infrastructure NPRM's* proposal to streamline the approval process for discontinuance applications to grandfather low-speed (i.e., below 1.544 Mbps) legacy voice and data services for existing customers, and applies a uniform reduced public comment period of 10 days and an automatic grant period of 25 days for all carriers making such applications to the Commission. The Order also adopts the *Wireline Infrastructure NPRM's* proposal to streamline the discontinuance process for applications seeking authorization to discontinue legacy data services below 1.544 Mbps that have previously been grandfathered for a period of at least 180 days, and applies a uniform reduced public comment period of 10 days and an auto-grant period of 31 days to all such applications. Discontinuing carriers that wish to avail themselves of this streamlined

process may do so by including a simple certification that they have received Commission authority to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. This certification must reference the file number of the prior Commission authorization to grandfather the services the carrier now seeks to permanently discontinue. The Order also adopts the *Wireline Infrastructure NPRM*'s proposal to streamline the discontinuance process for services that have no customers or have had no requests for the service for a period of time. For low-speed legacy services, the Order therefore reduces the period within which a carrier has had no customers or no requests for the service to be eligible for streamlining from the prior 180 days to 30 days, and further reduces the auto-grant period to 15 days. Finally, the Order clarifies that a carrier must consider only its own end-user customers when determining whether it must seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

155. In this Order, the Commission modifies its pole attachment rules to reduce costs for attachers, reform the pole access complaint procedures to settle access disputes more swiftly, and increase access to infrastructure for certain types of broadband providers. It also relaxes or removes regulatory requirements on carriers seeking to replace legacy network infrastructure and legacy services with advanced broadband networks and innovative new services. Overall, we believe the actions in this document will reduce burdens on the affected carriers, including any small entities.

156. *Pole Attachments.* The Order found that codifying the exclusion of capital expenses already recovered via make-ready fees from recurring pole attachment rates would help eliminate any confusion regarding the treatment of capital expenses already recovered by a

utility via make-ready fees. As detailed in the Order, the Commission considered arguments that it is unnecessary to codify this exclusion. However, the Order determined that this exclusion will enhance the deployment of broadband services to the extent that codifying the exclusion will keep recurring pole attachment rates low and uniform for attachers. The Order also found broad support in the record for establishing a 180-day shot clock for resolving pole access complaints, finding that establishment of such a shot clock could expedite broadband deployment by resolving pole attachment access disputes in a quicker fashion. As described in the Order, the Commission considered, but rejected, arguments opposing a shot-clock, as well as those requesting a shorter shot clock. Finally, the Order found it reasonable to interpret sections 224 and 251(b)(4) of the Act in harmony to create a reciprocal system of infrastructure access rules in which incumbent LECs, pursuant to section 251(b)(4) of the Act, are guaranteed access to poles owned or controlled by competitive LECs and vice versa, subject to the rates, terms, and conditions for pole attachments described in section 224. In making this finding, the Order evaluated arguments that this interpretation will discourage deployment or create additional burdens for competitive LECs. However, the Order found that the disparate treatment of incumbent LECs and competitive LECs prevents incumbent LECs from gaining access to competitive LEC-controlled infrastructure and in doing so dampens the incentives for all LECs to build and deploy the infrastructure necessary for advanced communications services.

157. *Network Change Notifications.* First, for rules pertaining to network changes generally, the Order eliminates the prohibition on incumbent LEC disclosures regarding potential network changes prior to public notice of those changes, but retains the procedures for objecting to short-term notices of network changes. In adopting this change, the Order considered, but rejected, suggestions that the Commission should require incumbent LECs to provide notice of network changes to all interconnecting entities before providing public notice, and arguments

that competing service providers might use the objection process to unwarrantedly delay a network change. Second, recognizing the uniqueness of copper retirements, the Order retains the distinction between copper retirements and other types of planned network changes. In making this determination, the Commission evaluated, but discounted, arguments that copper retirements require no special treatment as compared to other types of network changes. Third, the Order reduces the regulatory burdens associated with the copper retirement notice process by (i) narrowing the definition of copper retirement, (ii) reducing the scope of recipients and the required content of direct notice, and (iii) reducing the waiting period before an incumbent LEC can implement a planned copper retirement while reinstating the objection and associated resolution procedures previously applicable to copper retirement notices. As explained in the Order, the Commission considered arguments against these rule changes but found that our rules will afford sufficient time to accommodate planned changes and address parties' needs for adequate information and consumer protection. Finally, the Order adopts streamlined copper retirement notice procedures related to force majeure events. In adopting these rules, the Commission considered, but rejected, alternative solutions, including arguments that the Commission should proceed solely via waiver in this context.

158. *Section 214(a) Discontinuance Process.* The Order streamlines the review and approval process for three types of Section 214(a) discontinuance applications, those that: (i) grandfather low-speed legacy voice and data services; (ii) discontinue previously grandfathered low-speed legacy data services; and (iii) discontinue low-speed legacy services with no customers. The Order streamlines the approval process for discontinuance applications to grandfather low-speed legacy services by adopting a uniform reduced public comment period of 10 days and an automatic grant period of 25 days for all carriers seeking to grandfather legacy low-speed services for existing customers. For applications seeking authorization to discontinue

legacy data services below 1.544 Mbps that have previously been grandfathered for a period of at least 180 days, the Order applies a uniform reduced public comment period of 10 days and an auto-grant period of 31 days to all such applications. For applications to discontinue low-speed legacy voice and data services below 1.544 Mbps for which the carrier has had no customers and no request for service for at least a 30-day period prior to filing, the Order adopts a 15-day auto-grant period. In adopting these rules, the Order evaluated alternative approaches, and found that the adopted streamlining rules strike the appropriate balance to provide relief to carriers who wish to transition away from the provision of legacy services for which there is rapidly decreasing demand, while at the same time ensuring that potential consumers of these services have readily available alternatives. Finally, the Order clarifies that a carrier need not seek approval from the Commission to discontinue, reduce, or impair a service pursuant to section 214(a) of the Act when a change in service directly affects only carrier-customers. In adopting this clarification, the Commission noted that in many circumstances the carrier-customer will be able to obtain wholesale service from another source without causing a disruption of service for the end user, and found that this less burdensome approach better conforms with the text of the Act and Commission precedent. The Order therefore rejects arguments that the Commission should retain the 2015 interpretation predicated on the view that as a practical matter, if a carrier discontinues wholesale service to a carrier-customer, that carrier-customer may be unable to obtain wholesale service from another provider and may have no choice but to discontinue service to its end users, resulting in a downstream discontinuance of retail service.

G. Report to Congress

159. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief

Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.

V. PROCEDURAL MATTERS

A. Congressional Review Act

160. The Commission will send a copy of this Report and Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.

B. Final Regulatory Flexibility Analysis

161. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in Section IV supra.

C. Paperwork Reduction Act of 1995 Analysis

162. The Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

163. In this document, we have assessed the effects of reforming our pole attachment

regulations, network change notification procedures, and section 214(a) discontinuance rules, and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

D. Contact Person

164. For further information about this proceeding, please contact Michele Levy Berlove, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C313, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-1477, Michele.Berlove@fcc.gov, or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C235, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-0357, Michael.Ray@fcc.gov.

VI. ORDERING CLAUSES

165. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 201, 202, 214, 224, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201, 202, 214, 224, 251, and 303(r), this Report and Order IS ADOPTED.

166. IT IS FURTHER ORDERED that parts 1, 51, and 63 of the Commission's rules ARE AMENDED as set forth in Appendix A of the Report and Order, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act SHALL BE EFFECTIVE after announcement in the Federal Register of Office of Management and Budget approval of the rules, and on the effective date announced therein.

167. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for 47 CFR 1.1424, 51.325(a)(4) and (c) through (e), 51.329(c)(1), 51.332, 51.333(a) through (c), (f), and (g), 63.60(d) through (i), and 63.71(k), which contain information collection requirements that have not been approved by OMB. The Federal Communications

Commission will publish a document in the Federal Register announcing the effective date.

168. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

169. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 51

Interconnection.

47 CFR Part 63

Extension of lines, new lines, and discontinuance, reduction, outage and impairment of service by common carriers; and Grants of recognized private operating agency status.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 51, and 63 as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority for part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 310v, 332, 1403, 1404, 1451, 1452, and 1455.

Subpart J – Pole Attachment Complaint Procedures

2. Amend § 1.1409 by revising paragraph (c) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this paragraph (c), a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way. The Commission shall exclude from actual capital costs those reimbursements received by the utility from cable operators and telecommunications carriers for non-recurring costs.

* * * * *

3. Revise § 1.1424 to read as follows:

§ 1.1424 Complaints by incumbent local exchange carriers.

Complaints by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an

association of incumbent local exchange carriers alleging that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a local exchange carrier or that a rate, term, or condition for a utility pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part, as relevant. In complaint proceedings where an incumbent local exchange carrier (or an association of incumbent local exchange carriers) claims that it is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system for purposes of obtaining comparable rates, terms or conditions, the incumbent local exchange carrier shall bear the burden of demonstrating that it is similarly situated by reference to any relevant evidence, including pole attachment agreements. If a respondent declines or refuses to provide a complainant with access to agreements or other information upon reasonable request, the complainant may seek to obtain such access through discovery. Confidential information contained in any documents produced may be subject to the terms of an appropriate protective order.

4. Add § 1.1425 to read as follows:

§ 1.1425 Review period for pole access complaints.

(a) Except in extraordinary circumstances, final action on a complaint where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility should be expected no later than 180 days from the date the complaint is filed with the Commission.

(b) The Enforcement Bureau shall have the discretion to pause the 180-day review period in situations where actions outside the Enforcement Bureau's control are responsible for delaying review of a pole access complaint.

PART 51 – INTERCONNECTION

5. The authority for part 51 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-55, 201-05, 207-09, 218, 220, 225-27, 251-54, 256, 271, 303(r), 332, 1302.

6. Amend § 51.325 by revising paragraph (a)(4), removing paragraphs (c) and (e), and redesignating paragraph (d) as (c) to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * *

(4) Will result in a copper retirement, which is defined for purposes of this subpart as:

(i) The removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops; or

(ii) The replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in § 51.319(a)(3).

* * * * *

7. Amend § 51.329 by revising paragraph (c)(1) to read as follows:

§ 51.329 Notice of network changes: Methods for providing notice.

* * * * *

(c) * * *

(1) The public notice or certification must be labeled with one of the following titles, as appropriate: “Public Notice of Network Change Under Rule 51.329(a),” “Certification of Public Notice of Network Change Under Rule 51.329(a),” “Short Term Public Notice Under Rule 51.333(a),” “Certification of Short Term Public Notice Under Rule 51.333(a),” “Public Notice of Copper Retirement Under Rule 51.333,” or “Certification of Public Notice of Copper Retirement Under Rule 51.333.”

* * * * *

§ 51.332 [Removed]

8. Remove § 51.332.

9. Amend § 51.333 by revising the section heading and paragraphs (a) introductory text, (a)(1), (b), and (c) heading and introductory text and adding paragraphs (f) and (g) to read as follows:

§ 51.333 Notice of network changes: Short term notice, objections thereto and objections to copper retirement notices.

(a) *Certificate of service.* If an incumbent LEC wishes to provide less than six months' notice of planned network changes, or provide notice of a planned copper retirement, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by § 51.327(a) or § 51.329(a)(2), as applicable. The certificate of service shall include:

(1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network, provided that, with respect to copper retirement notices, such service may be made by postings on the incumbent LEC's website if the directly interconnecting telephone exchange service provider has agreed to receive notice by website postings; and

* * * * *

(b) Implementation date. The Commission will release a public notice of filings of such short term notices or copper retirement notices. The effective date of the network changes referenced in those filings shall be subject to the following requirements:

(1) Short term notice. Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to

paragraph (c) of this section.

(2) Copper retirement notice. Notices of copper retirement, as defined in § 51.325(a)(4), shall be deemed final on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section, except that notices of copper retirement involving copper facilities not being used to provision services to any customers shall be deemed final on the 15th day after the release of the Commission's public notice of the filing. Incumbent LEC copper retirement notices shall be subject to the short-term notice provisions of this section, but under no circumstances may an incumbent LEC provide less than 90 days' notice of such a change except where the copper facilities are not being used to provision services to any customers.

(c) Objection procedures for short term notice and copper retirement notices. An objection to an incumbent LEC's short term notice or to its copper retirement notice may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

* * * * *

(f) Resolution of objections to copper retirement notices. An objection to a notice that an incumbent LEC intends to retire copper, as defined in § 51.325(a)(4) shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper facilities at issue.

(g) Limited exemption from advance notice and timing requirements for copper retirements--(1)

Force majeure events. (i) Notwithstanding the requirements of this section, if in response to a force majeure event, an incumbent LEC invokes its disaster recovery plan, the incumbent LEC will be exempted during the period when the plan is invoked (up to a maximum 180 days) from all advanced notice and waiting period requirements associated with copper retirements that result in or are necessitated as a direct result of the force majeure event.

(ii) As soon as practicable, during the exemption period, the incumbent LEC must continue to comply with § 51.325(a), include in its public notice the date on which the carrier invoked its disaster recovery plan, and must communicate with other directly interconnected telephone exchange service providers to ensure that such carriers are aware of any changes being made to their networks that may impact those carriers' operations.

(iii) If an incumbent LEC requires relief from the copper retirement notice requirements longer than 180 days after it invokes the disaster recovery plan, the incumbent LEC must request such authority from the Commission. Any such request must be accompanied by a status report describing the incumbent LEC's progress and providing an estimate of when the incumbent LEC expects to be able to resume compliance with the copper retirement notice requirements.

(iv) For purposes of this section, "force majeure" means a highly disruptive event beyond the control of the incumbent LEC, such as a natural disaster or a terrorist attack.

(v) For purposes of this section, "disaster recovery plan" means a disaster response plan developed by the incumbent LEC for the purpose of responding to a force majeure event.

(2) Other events outside an incumbent LEC's control. (i) Notwithstanding the requirements of this section, if in response to circumstances outside of its control other than a force majeure event addressed in paragraph (g)(1) of this section, an incumbent LEC cannot

comply with the timing requirement set forth in paragraph (b)(2) of this section, hereinafter referred to as the waiting period, the incumbent LEC must give notice of the copper retirement as soon as practicable and will be entitled to a reduced waiting period commensurate with the circumstances at issue.

(ii) A copper retirement notice subject to paragraph (g)(2) of this section must include a brief explanation of the circumstances necessitating the reduced waiting period and how the incumbent LEC intends to minimize the impact of the reduced waiting period on directly interconnected telephone exchange service providers.

(iii) For purposes of this section, circumstances outside of the incumbent LEC's control include federal, state, or local municipal mandates and unintentional damage to the incumbent LEC's copper facilities not caused by the incumbent LEC.

**PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE,
REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON
CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY
STATUS**

10. The authority for part 63 continues to read as follows:

AUTHORITY: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

11. Amend § 63.60 by redesignating paragraphs (d) through (h) as (e) through (i) and adding new paragraph (d) to read as follows:

§ 63.60 Definitions.

* * * * *

(d) Grandfather means to maintain the provision of a service to existing customers while ceasing

to offer that service to new customers.

* * * * *

12. Amend § 63.71 by adding paragraph (k) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(k) The following requirements are applicable to certain legacy services operating at speeds lower than 1.544 Mbps:

(1) Notwithstanding paragraphs (a)(5)(i) and (ii) of this section, if any carrier, dominant or non-dominant, seeks to:

(i) Grandfather legacy voice or data service operating at speeds lower than 1.544 Mbps;

or

(ii) Discontinue, reduce, or impair legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for a period of no less than 180 days consistent with the criteria established in paragraph (k)(4) of this section, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy

Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(2) For applications to discontinue, reduce, or impair a legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for a period of no less than 180 days, in order to be eligible for automatic grant under paragraph (k)(4) of this section, an applicant must include in its application a statement confirming that it received Commission authority to grandfather the service at issue at least 180 days prior to filing the current application.

(3) An application filed by any carrier seeking to grandfather legacy voice or data service operating at speeds lower than 1.544 Mbps for existing customers shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

(4) An application filed by any carrier seeking to discontinue, reduce, or impair a legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for 180 days or more preceding the filing of the application, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the applicant that the grant will not be automatically effective.

(5) An application seeking to discontinue, reduce, or impair a legacy voice or data service operating at speeds lower than 1.544 Mbps for which the requesting carrier has had no

customers and no reasonable requests for service during the 30-day period immediately preceding the filing of the application, shall be automatically granted on the 15th day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the applicant that the grant will not be automatically effective.

[FR Doc. 2017-27198 Filed: 12/27/2017 8:45 am; Publication Date: 12/28/2017]